

## EXHIBIT R

Womack testimony.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA

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In Re:

Case No. 14-61357

JOHN HENRY SCHNEIDER,

Debtor.

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THE HON. RALPH B. KIRSCHER, presiding

TRANSCRIPT OF PROCEEDINGS

Billings, Montana  
April 26, 2016

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1 SCHNEIDER BANKRUPTCY

2 BILLINGS, MONTANA

3 - - -

4 BE IT REMEMBERED THAT this matter came on for  
5 hearing on April 26, 2016, in the United States Bankruptcy  
6 Court, District of Montana, The Hon. Ralph B. Kirscher,  
7 presiding:

8  
9 The following proceedings were had:

10  
11 THE COURT: I believe that gets us to the  
12 remaining matter, In Re: Schneider, 14-61357.

13 This is on several matters: Trustee's motion to  
14 approve compromises and settlements and the objections  
15 thereto, and also I believe that there is a pending request  
16 for judicial notice and an objection thereto as well.

17 Counsel, please correct me if I'm in error about  
18 that or if, in fact, there are other matters as well that  
19 just don't show up on my calendar.

20 I will also have all counsel state their  
21 appearances for the record.

22 MR. GARDNER: Trent Gardner for the trustee.

23 And I believe the Court is correct. There's two  
24 motions to approve settlements, there is an outstanding  
25 objection to a request for judicial notice. I think that's

1 an issue that should probably be dealt with as the evidence  
2 comes in and if there's issues related to it.

3 THE COURT: Okay.

4 TRUSTEE WOMACK: Your Honor, Joe Womack, trustee,  
5 and also acting as counsel in AP-20, the motion to approve  
6 compromise and settle for purpose -- of the discharge.

7 For purposes of the hearing, since I will be  
8 testifying, we're requesting that Mr. Gardner act as  
9 counsel in asking me questions during that testimony.

10 THE COURT: Okay.

11 MR. COSSITT: All right. Jim Cossitt, Kalispell,  
12 Montana, appearing on behalf of Dr. John Schneider, the  
13 debtor.

14 With respect to the Court's inquiry regarding  
15 judicial notice, the Court should note that at Docket 288,  
16 we have filed an objection to the request for judicial  
17 notice by Meridian Surgical Partners along with a request  
18 to be heard under Rule 201.

19 Our view diverges from the trustee. We think  
20 that it would be more appropriate and germane for the Court  
21 to address some of those issues at the outset of today's  
22 hearings so as to -- for two reasons: 1, to clarify what  
23 the rules of the game are with respect to the Court's  
24 attitude towards judicial notice; and No. 2, to perhaps  
25 expedite the introduction of evidence by clarifying this at

1 the front end. Thank you.

2 MR. YORK: Aaron York for the Office of the US  
3 Trustee.

4 THE COURT: Mr. Parker.

5 MR. PARKER: Mark Parker for Schneider Limited  
6 Partnership, Schneider Management, LLC, Michelle R.  
7 Schneider personally; and as trustee of the Brandon  
8 Schneider Benefit Trust, the Shannon Schneider Benefit  
9 Trust, the Caitlin Schneider Benefit Trust, and the  
10 Michelle Schneider Revocable Trust.

11 THE COURT: Okay.

12 MR. JAMES: Doug James for Meridian Surgical  
13 Partners, LLC, and Meridian Surgical Partners Montana, LLC.

14 THE COURT: Okay.

15 MR. SOUEIDI: Joe Soueidi for Meridian Surgical  
16 Partners, LLC, and Meridian Surgical Partners Montana, LLC.

17 MR. PATTEN: Andy Patten on behalf of the medical  
18 malpractice claimants.

19 MR. MOYERS: And I'm Jon Moyers. I represent the  
20 medical malpractice claimants.

21 THE COURT: Your last name, I didn't catch it.

22 MR. MOYERS: Moyers.

23 THE COURT: Okay, okay. I believe it's Mr. James  
24 that has the request for judicial notice. Why don't we  
25 take that up.

1 MR. JAMES: Good morning, Your Honor.

2 THE COURT: Good morning.

3 MR. JAMES: Doug James on behalf of Meridian.

4 We filed a request for judicial notice asking  
5 this court to take judicial notice of a number of documents  
6 to the extent permitted by the Federal Rules of Evidence.  
7 The Court entered an order acknowledging that it would take  
8 judicial notice of those matters to the extent permitted by  
9 the Federal Rules of Evidence.

10 The trustee and Dr. Schneider subsequently  
11 objected stating that the Court should not take judicial  
12 notice of these documents beyond the extent permitted by  
13 the Federal Rules of Evidence. So I'm not sure what the  
14 objection is here. It seems nonsubstantive.

15 We would argue that the exhibits that we asked  
16 the Court to take judicial notice of, that included  
17 Dr. Schneider's bankruptcy schedules and amended bankruptcy  
18 schedules. But those are also admissions against interest  
19 of a party and they are sworn testimony, so substantively,  
20 those two documents differ than the others.

21 We have simply asked the Court to take judicial  
22 notice that those documents were filed, and we have not  
23 asked the Court to take judicial notice of the facts  
24 contained therein or after their veracity. Although, as we  
25 have noted with the brief that we filed yesterday, the



1 trustee has testified in support of many of those facts and  
2 confirmed them, and so we're prepared to put that evidence  
3 on today, but that is not a matter of judicial notice.

4 So that's all I have, Your Honor.

5 THE COURT: Okay. Thank you, Mr. James.

6 Mr. Cossitt.

7 MR. COSSITT: Thank you, Your Honor. The record  
8 before the Court does reflect that there are a couple of  
9 requests for judicial notice, but we've only objected to  
10 one with our request to be heard.

11 The basic thrust of the judicial notice doctrine  
12 and the basic thrust of my client's concern -- excuse me  
13 for a moment. I left my notes over at the counsel table.

14 THE COURT: You may pick them up.

15 MR. COSSITT: The basic thrust of my client's  
16 concern with respect to using this process to short-circuit  
17 the traditional introduction of evidence is that the  
18 Court's orders approving judicial notice indicate that it,  
19 that the request was granted to the extent permitted by the  
20 federal rules.

21 The federal rules and the cases construing the  
22 rules are, frankly, a hodgepodge. I spent a considerable  
23 amount of time going through Judge Russell's Bankruptcy  
24 Evidence Manual with respect to the various types of  
25 documents which the proponents of judicial notice have put

1 before the Court in these requests. And frankly, I haven't  
2 briefed each and every one of the types of documents; I  
3 focused on what I thought was the most -- the one that was  
4 most troublesome and prejudicial.

5 But the -- what, what we seek to clarify here is  
6 the Court's understanding. We seek to clarify at the  
7 outset so that the lawyers involved in these proceedings  
8 understand just how much weight the Court is going to give  
9 the documents that -- for which it granted judicial notice.

10 And overall, I'm requesting the Court reconsider  
11 its order granting judicial notice, and in support of this  
12 request cite to the Court Russell's Evidence Manual  
13 Volume II, Paragraph -- or Section 2.01:2: Facts subject  
14 to judicial notice.

15 And I'll briefly read some of it into the record  
16 with the Court's permission. Rule 201 governs only  
17 judicial notice of adjudicative facts. Adjudicative facts  
18 usually answer the questions of who did what, where, when,  
19 how, why, and with what motive or intent; adjudicative  
20 facts are roughly the kind of facts that go to a jury in a  
21 jury case.

22 Then I'm going to skip some material:

23 Requests for judicial notice of an adjudicative  
24 fact should rarely arise at trial in civil litigation.  
25 Where a fact is generally known or capable of accurate and

1 ready determination, the fact is the proper subject of  
2 either a stipulation or a request for admission pursuant to  
3 Rule 7036 or Federal Rule 36.

4 Then Judge Russell goes on to admonish, admonish  
5 his readers that:

6 The Advisory Committee notes make clear that  
7 extreme caution should be used in the taking of judicial  
8 notice of adjudicative facts because of the traditional  
9 belief that the taking of evidence subject to established  
10 safeguards is the best way to resolve controversies  
11 involving disputes of fact.

12 And he cites a Fifth Circuit case, Hardy vs.  
13 Johns-Manville, stated the proposition as follows (quoted  
14 as recorded):

15 "Judicial notice applies to self-evident truths  
16 that no reasonable person could question, truisms that  
17 approach platitudes or banalities. The proposition that  
18 asbestos causes cancer, because it is inextricably linked  
19 to a host of disputed issues; can mesothelioma arise  
20 without exposure to asbestos, is the sale of asbestos" -  
21 yada-yada-yada, it goes on - "is not at present so  
22 self-evident as a proposition to be subject to judicial  
23 notice."

24 With Judge Russell's commentary, the basis of  
25 our -- forms the basis of our objection. It's a doctrine

1 that's to be used sparingly. We believe that it is being  
2 attempted to be used in this proceeding to bypass  
3 traditional evidentiary safeguards of authentication, best  
4 evidence rule, and a lot of those documents are chock-full  
5 of hearsay.

6 Consequently, we filed our objection. I've tried  
7 to give the Court some authority as to why it should  
8 reconsider its opinion -- or its order, particularly with  
9 respect to the letter from the Commissioner of Securities  
10 and Insurance, which is chock-full of hearsay. And we  
11 would request the Court reconsider its orders with --  
12 across the board with respect to judicial notice and rely  
13 on the traditional methods of introduction of evidence with  
14 respect to the appropriate safeguards.

15 THE COURT: Okay. Your objection is overruled.

16 Let me tell you -- and you've been practicing  
17 before me long enough, Mr. Cossitt, as well as all the  
18 other attorneys in this room. You know, a long time ago,  
19 we saw some requests for judicial notice, and I am going to  
20 follow the rules of evidence as to what is and isn't  
21 admitted.

22 It seemed at that point in time, it is -- the  
23 course would be, rather than just a flat denial of  
24 everything, a granting of -- to the extent they're allowed  
25 by the rule. These are all bench trials. I'm going to

1 look at them and I'm going to decide, based upon the  
2 evidence, what is and isn't permissible.

3 And as it relates to documents that are filed,  
4 the traditional things that one takes judicial notice about  
5 that are, in fact, unquestionable -- you know, what was the  
6 weather on December 26th? I mean, you can look at it, you  
7 know what it was.

8 Or if there's a document that's been filed, I am  
9 not going to necessarily consider the truth of the matter  
10 asserts therein because I think that is subject to  
11 testimony and subject to cross-examination. So the things  
12 that I take judicial notice of is pretty much a filing,  
13 it's in the docket.

14 Now, there was a question raised about schedules  
15 and amended schedules. I think that might be a little  
16 different; although, at times I've, even from the bench,  
17 said, "I'm not going to, I'm not going to take what's in  
18 there as truth unless you put on some evidence," because  
19 maybe there was a mistake. So I'm very cautious about.

20 But one way to deal with those - and I think most  
21 of the attorneys that have come before me understand that  
22 process - that I'm not going to use it if it's not  
23 appropriate. And so that's where I'm at.

24 So the motion stands as granted and -- or the  
25 request, but I certainly would entertain testimony on any

1 issue that someone feels is appropriate, and  
2 cross-examination. Now, trial is -- cross-examination is a  
3 very important process of our judiciary.

4 MR. COSSITT: Thank you very allowing us to be  
5 heard.

6 THE COURT: Sure, thank you.

7 Okay. On to the two motions, one involving  
8 basically, what, 15-15; and the other, 15-20.

9 And as I understand it, 15-15 is subject to  
10 approval of 15-20 as a term in the settlement in 15-20. Is  
11 that correct?

12 If I don't approve 15-20, 15-15 isn't effective?

13 MR. GARDNER: Yes, Your Honor. Trent Gardner for  
14 the trustee.

15 There is a settlement agreement before the Court  
16 in AP 15 - it's called, being called the "fraudulent  
17 transfer action" or the "substantive consolidation action"  
18 - and a settlement agreement that was reached at the same  
19 time in AP 20, the non-discharge action. Both settlement  
20 agreements have a condition in them that they are  
21 contingent on approval of the other settlement.

22 THE COURT: Okay.

23 MR. GARDNER: And as I understand it, I don't  
24 believe anybody has produced any substantive objection to  
25 AP 15, but I think we'll need to walk through both of them.

1 THE COURT: Well, the concern I have is, you  
2 know, 15-15 gets approved -- say for argument it gets  
3 approved. My feeling is -- here's where -- let me give you  
4 a little background.

5 I'm really, I'm really concerned that we've put  
6 this thing off for mediation, I get a report in mediation,  
7 "All the parties agree, everything's settled," they filed  
8 a -- you filed the motions to compromise and settle, and  
9 suddenly we've got all kinds of objections.

10 To me, that's not a successful mediation because  
11 not all the parties agreed. And so that's why I'm asking  
12 whether 15-15 can stand alone because there's no objection  
13 to it. But it can't under the terms of the 15-20  
14 settlement.

15 MR. GARDNER: We are very concerned about the  
16 time and the process and everything, too. That contingency  
17 was not put in and was not something that the trustee -- at  
18 the trustee's request. It was at the defendant's request,  
19 and it was something that was put in.

20 We felt that we had very substantial assets that  
21 needed to be in the settlement and that it needed to be put  
22 before the Court, and these were the terms on which we  
23 could agree.

24 THE COURT: But, then, under the A & C factors,  
25 I've got to look at the interest of creditors, and I've got

1 all these creditors saying, "What are you doing? Judge,  
2 there's know you can approve this. They're buying a  
3 discharge."

4 MR. GARDNER: And --

5 THE COURT: Which the way it's structured right  
6 now, I think you could argue that.

7 MR. GARDNER: There's certainly arguments to be  
8 made.

9 From the trustee's perspective, he very much and  
10 very deeply considered the interests of the creditors; he  
11 talked to the primary creditors' counsel before mediating;  
12 he had an understanding that if there were substantial  
13 assets on the table, of course no delineation of that, that  
14 it was possible that creditors would consent to a  
15 settlement of both actions. He never would have entered  
16 into this settlement if he didn't think it was a  
17 possibility at the mediation.

18 THE COURT: But isn't the 450 really part of  
19 15-15?

20 MR. GARDNER: The 450 is Michelle Schneider's  
21 interest in the Billings house and the combined homestead.

22 THE COURT: Which has nothing to do with  
23 discharge.

24 MR. GARDNER: They're, they're assets that -- we  
25 do have claims to the Billings house in AP 15. It's not at



1 all clear if we could have got to this portion that we're  
2 in -- so the 450 we feel is assets that were contributed  
3 from outside sources for the purpose of that discharge.

4 It's, it is a tricky issue and it's not the ideal  
5 situation to be coming before this court, but the trustee  
6 considered everything. And there is a lot of assets on the  
7 table, there's a lot of potential for waste, and it's a  
8 substantial recovery that we felt needed to be brought  
9 forward.

10 THE COURT: But I've got U.S. Trustee telling me  
11 they want to proceed, they'll take over the course on  
12 15-20. I've got obviously a number of creditors here that  
13 seem more than happy to pursue -- take the risk and not  
14 worry about what's recovered in the bankruptcy and, if no  
15 discharge is entered, to proceed against Defendant/Debtor  
16 otherwise. Whether they get anything, who knows what, what  
17 they will get?

18 You know, you're the first one up, so you're  
19 getting some of these questions, but I guess I'm just, I'm  
20 concerned. Obviously, I'll hear the evidence and I'll see  
21 if it meets the A & C factors. Obviously, compromise under  
22 9019 is not a trial on the merits, it's not a mini-trial,  
23 anything of that nature. You've got to come forward with  
24 you're a & C factors and substantiate them.

25 But I have some real reservations, and maybe that

1 will assist in you presenting your case and everyone else  
2 presenting their case as to where I'm -- my concerns in  
3 this matter. Because the way it's structured right now, I  
4 just think that there's the argument that it's merely  
5 buying one's discharge, and that's a horrible precedent  
6 that I'm going to be very cautious about.

7 Now, if the 450 was in 15-15, that's another  
8 question, but it's not, and it ties to 15-20. And I --  
9 I'll let the evidence, I guess, tell me what may be the  
10 more appropriate manner in handling this.

11 MR. GARDNER: It is a difficult situation because  
12 they are tied together. And the reason the trustee's here  
13 is he believes firmly that this result will provide a  
14 better net benefit to creditors than litigating these  
15 issues for years.

16 THE COURT: But how can, how can I understand it  
17 or appreciate that when I've got a roomful of creditors  
18 that are saying "no"?

19 MR. GARDNER: I fully understand that, Your  
20 Honor. We reached a settlement. We thought --

21 THE COURT: Were the creditors involved in the  
22 settlement?

23 MR. GARDNER: They were not involved in the  
24 mediation. Like I say, they were --

25 THE COURT: Why not?

1 MR. GARDNER: Well, because they weren't parties  
2 to the adversary proceedings. They weren't parties to the  
3 proceedings, so I -- the trustee conferred with them before  
4 the mediation. We conferred with the personal injury  
5 plaintiff's counsel who make up the bulk of the claims in  
6 this case, those people who have those med-mal claims, and  
7 we talked to them immediately after the mediation.

8 We believed there, there was a chance they would  
9 agree to it, and they decided they would rather have the  
10 opportunity to have Dr. Schneider not get his discharge and  
11 pursue him. This wasn't something the trustee did without  
12 consulting and conferring and taking into account. At the  
13 end of the day -- (inaudible.)

14 THE COURT: Well, he had to because he knew he  
15 had to satisfy the fourth factor of A & C.

16 MR. GARDNER: Well, it wasn't just a matter of  
17 trying to satisfy the fourth factor of A & C; it was a  
18 matter of taking everything into consideration. Yes, you  
19 have to follow the factors, but it's what Mr. Womack does  
20 in -- you know, so regardless of the factors, he was taking  
21 into account their feelings and their views. And at the  
22 end of the day, they had to make a decision, and they  
23 decided they would object to the settlement of the  
24 discharge action.

25 THE COURT: Yeah. Well, I can certainly

1 understand the efforts to try to mediate with the parties  
2 that were in the litigation to resolve 15-15, which is --  
3 has been referred to district court under a Stern issue.  
4 And so you've got a jury trial looming there that is  
5 proceeding.

6 MR. GARDNER: And a trial in this court on the  
7 substantive consolidation issue.

8 THE COURT: True. And also, you've got this  
9 adversary case set for trial in May, even though it's --  
10 I've held it in abeyance, but we've got a month yet to get  
11 ready for trial. We've got it scheduled for a three-day  
12 trial on discharge. So, you know, I don't see any reason  
13 we can't use that date.

14 MR. GARDNER: And I won't weigh in on that date  
15 because I'm not counsel in that.

16 THE COURT: Okay, okay. Well, I can see  
17 attorneys kind of looking at each other like, Oh, no,  
18 but --

19 MR. GARDNER: There's also the separate Meridian  
20 arbitration set for June, which --

21 THE COURT: Yeah.

22 MR. GARDNER: -- who appears in that case is  
23 dependent upon the AP 15 settlement.

24 THE COURT: Okay. Well, I've probably taken up  
25 enough dialogue. We should probably go forward with the

1 evidence as to the motions and the objections.

2 So would you like to call your first witness?

3 MR. GARDNER: Yes. I call Joseph Womack, the  
4 Chapter 7 trustee.

5 THE COURT: Okay. Mr. Womack, if you would come  
6 to the podium to be sworn, please.

7 JOSEPH WOMACK, TRUSTEE, SWORN

8 THE COURT: Mr. Womack, I think -- (inaudible.)  
9 I don't see another one, so you may proceed.

10 MR. GARDNER: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. GARDNER:

13 Q. Please state your name.

14 A. Joe Womack.

15 Q. And how are you employed?

16 A. I'm an attorney with Waller & Womack, PC, and I serve  
17 as a Chapter 7 bankruptcy panel trustee for the Bankruptcy  
18 Court for the District of Montana.

19 Q. And how long have you been a Chapter 7 panel trustee?

20 A. About 20 years.

21 Q. And how many Chapter 7 cases have you been appointed as  
22 trustee in?

23 A. I don't know the exact number, but in excess of 4,000.

24 Q. Besides being a Chapter 7 trustee, do you do -- engage  
25 in other -- practice law in other areas?

1 A. Yes. I represent other trustees, creditors, debtors.  
2 I also have a small private practice, a general civil  
3 practice that I engage in the practice of law.

4 Q. And what is your involvement in the Dr. Schneider  
5 bankruptcy?

6 A. I was appointed as the Chapter 7 panel trustee for the  
7 case when it was filed in December of 2014.

8 Q. And give me a brief overview of, from your involvement,  
9 kind of what is -- what you've done in this case.

10 A. I have gone -- well, first of all, I reviewed  
11 schedules, statement of affairs that were filed and began  
12 assessing assets/liabilities that were listed in those  
13 schedules, began to try to get more information about the  
14 claims that were listed by Dr. Schneider and the assets  
15 listed, and began trying to get information regarding his  
16 financial situation before the bankruptcy was filed, and  
17 determined whether or not there were assets that could be  
18 recovered for the benefit of creditors.

19 MR. COSSITT: Your Honor, I'm so sorry to --

20 THE COURT: Mr. Cossitt.

21 MR. COSSITT: I'm so sorry to interrupt Counsel's  
22 direct examination.

23 I neglected to make a motion to exclude  
24 witnesses. I believe there's a number of people in the  
25 courtroom that are nonparties that are contemplated to be

1 witnesses. I intended to make this motion at the outset,  
2 and I apologize for interrupting Counsel's direct  
3 testimony.

4 THE COURT: Yeah. With the motion, anyone that's  
5 a witness that is nonparty, I do exclude you from the  
6 courtroom.

7 Is there only one?

8 MR. PATTEN: No. Mallory --

9 THE COURT: Why don't you take a moment and sort  
10 through who needs to go and who needs to stay.

11 UNIDENTIFIED SPEAKER: Okay -- (inaudible.)

12 THE COURT: I appreciate, Mr. Cossitt, you making  
13 that request.

14 MR. COSSITT: And I apologize again, Your Honor.

15 THE COURT: And I think you can proceed. You may  
16 proceed.

17 MR. GARDNER: Thank you, Your Honor.

18 Q. (By Mr. Gardner) Did you also hold 341 meetings?

19 A. Yes, a number of them.

20 Q. And did you seek documents besides from the debtor,  
21 from other sources?

22 A. Yes. If, if you're looking at an entire overview of  
23 the case, we subpoenaed documents from a number of  
24 different sources pursuant to 2004 examination, requested a  
25 lot of documents from the debtor and through his counsel as

1 well and have done that throughout the proceedings in this  
2 bankruptcy.

3 Q. And some of those third-party sources, did they include  
4 law firms?

5 A. Yes. Dr. Schneider was represented by a law firm in  
6 Wyoming, the Greear - Clark firm, I believe it is, where he  
7 was engaged in asset protection and estate planning work.  
8 We requested documents from them.

9 We requested documents, subpoena documents from his  
10 accountant's two primary firms. One was Western Sage down  
11 in Wyoming, and another was an accountant by the name of  
12 Pat Boyle in Montana.

13 We got 2004 subpoenas and obtained bank records from a  
14 number of different sources: U.S. Bank, Stockman Bank,  
15 any, any bank that we thought that Dr. Schneider had had  
16 any involvement with, during his, his time prior to the  
17 filing of the bankruptcy and immediately afterwards.

18 Q. And at some point, based on your investigation, did you  
19 retain separate counsel to investigate potential avoidance  
20 in other actions?

21 A. I did. Actually, fairly early on we retained the Goetz  
22 law firm and yourself and the associates in the firm to, to  
23 file Adversary AP 15-15, which was to avoid various  
24 transfers of property, substantially consolidate entities  
25 that Dr. Schneider had set up, and try to obtain those



1 assets for the benefit of the estate.

2 Q. Was there also another adversary proceeding filed  
3 related to the Molt property?

4 A. There was. Actually, the first adversary proceeding  
5 that was filed was against Kathleen Burrows and with --  
6 related to some property located near Billings and Molt  
7 about 20 - 30 miles away where it appeared that there had  
8 been preferential transfers of property and/or money to  
9 Kathleen Burrows, who is Dr. Schneider's sister, within one  
10 year prior to the time of the -- or within a couple of  
11 years prior to the time of the filing of the bankruptcy.

12 Q. And what was the result of that Burrows adversary  
13 proceeding? I believe it was AP No. 8.

14 A. We ultimately settled that proceeding. Doc -- or  
15 Kathleen Burrows paid \$75,000 to the estate in exchange for  
16 dismissal.

17 She also provided -- in the course of that adversary  
18 proceeding, we obtained testimony from her regarding  
19 transactions or dealings with Dr. Schneider prior to the  
20 filing of his bankruptcy and shortly after the filing of  
21 his bankruptcy. And she paid those proceeds, and then we  
22 dismissed the adversary proceeding.

23 Q. All right. Your investigation and handling of the case  
24 along with your counsel, I mean, are we talking about  
25 gathering and reviewing thousands of documents or tens of

1 thousands of documents?

2 A. It's literally thousands, it could be in the tens of  
3 thousands. It's been a very substantial -- well, I would  
4 say it's tens of thousands of documents. It's, it's been a  
5 very large number of documents that we have obtained and  
6 reviewed as part of this so far.

7 Q. Did you also file a non-discharge action against  
8 Dr. Schneider?

9 A. Yes. This is AP 15-20. I filed that seeking to deny  
10 Dr. Schneider's discharge for violation of various  
11 provisions of 11 USC Section 727.

12 Q. Now, there's also the issue of the Meridian  
13 arbitration. Can you briefly tell me what the Meridian  
14 arbitration is?

15 A. Dr. Schneider listed a claim against Meridian Surgical  
16 Partners of Montana and Tennessee, I believe, claiming that  
17 they had breached -- or that they were liable for damages  
18 to him in excess of \$10 million with respect to the  
19 building, construction, and operation of an outpatient  
20 surgical center in Billings, Montana.

21 That surgery center was built in Montana, here in  
22 Billings. It was never operated. They were unable to get  
23 what is called a "transfer agreement" with the local  
24 hospitals. As a result, they could not conduct surgical or  
25 medical procedures in the facility.

1           And without that transfer agreement, if there was a  
2           problem with the patient, they had the -- they needed to  
3           have the ability to take him to the emergency room in the  
4           hospital. And if they did not -- if they were not able to  
5           do that, if they didn't have a transfer agreement with  
6           either the Billings Clinic or St. Vincent's Hospital, they  
7           could not, they could not open and treat patients or  
8           conduct medical services there. So that never occurred.

9           There was an arbitration provision in the various  
10          contracts that were involved. For a number of years now,  
11          that -- there have been contract disputes and claims made  
12          back and forth regarding that entire transaction including  
13          Dr. Schneider's claim that he was owed several millions,  
14          multiple millions of dollars in lost earnings revenue as a  
15          result of Meridian's breach of those agreements.

16         Q. Now, does Meridian also have, I believe a \$3 million  
17         claim in this bankruptcy against Dr. Schneider  
18         individually?

19         A. That's correct. As part of the, as part of the  
20         arbitration proceeding, they filed a counterclaim against  
21         Dr. Schneider asserting a \$3 million claim. They then  
22         filed a proof of claim in the bankruptcy proceeding  
23         claiming \$3 million in damages caused by Dr. Schneider.

24         Q. And was Dr. Schneider an investor in Meridian?

25         A. Not personally, no. There was no contractual

1 relationship that I could discover between Dr. -- a direct  
2 contractual relationship between Dr. Schneider and either  
3 of the two Meridian defendants and counter-claimants.

4 Either way, Meridian had no contractual agreement with  
5 Dr. Schneider and Dr. Schneider did not with him.

6 Q. And who was the investor in Meridian?

7 A. There were a number of doctors from the Cody area,  
8 Wyoming, that were investors of -- physician's assistants  
9 and others.

10 The primary entity related to Dr. Schneider was  
11 Schneider Limited Partnership, which is a separate legal  
12 entity, and that is the investor in the Omni center,  
13 surgical center transaction or business.

14 Q. So are there also claims in the arbitration back and  
15 forth between Meridian and Schneider Limited Partnership?

16 A. Yes.

17 Q. And are all the other doctor investors also involved in  
18 the arbitration?

19 A. They are.

20 Q. Is it a rather complex arbitration?

21 A. Very complex. It's been a lot of discovery, a lot of  
22 depositions, a lot of documents going back and forth.

23 Q. When is the arbitration set for this matter?

24 A. Yeah. It's been going on for a couple of years now,  
25 and the arbitration proceeding is set for a two-year

1 trial -- or, excuse me, a two-week trial in Minnesota in  
2 June, around the 10th of June, I believe.

3 Q. Now, in this settlement that we're talking about, what  
4 happens to Dr. Schneider's individual claims against  
5 Meridian?

6 A. The individual claim of Dr. Schneider is currently held  
7 by the bankruptcy estate, obviously. In the settlement  
8 proposed under AP 15, he takes that claim and can proceed  
9 against Meridian in the arbitration. He has a duty to  
10 defend, and he cannot settle AP 15 without it taking care  
11 of the bankruptcy claim for \$3 million.

12 Q. Did you mean settle his individual claims in the  
13 arbitration without doing that?

14 A. Correct. We didn't want him to be able to go to  
15 Meridian and say, "Okay, you can pay me some money and then  
16 you can go into the bankruptcy and still have the  
17 \$3 million claim in the bankruptcy."

18 Q. What's, what's your view of the individual claims in  
19 the arbitration, both Meridian's against Dr. Schneider and  
20 Dr. Schneider's against Meridian?

21 A. I don't think that Dr. Schneider's claim really has any  
22 great value nor do I think that Meridian's claim has  
23 significant value against Dr. Schneider and the estate.

24 Dr. Schneider 's claim is based on a loss of a stream  
25 of income over 10 years. There are a lot of problems.

1 First, they were not -- there was no - (inaudible) -  
2 contract.

3 Second, he's got a duty to mitigate. And to say that  
4 he lost all of his money through this loss of ability to  
5 provide neurological -- or neurosurgical services --

6 Q. What about Meridian's claim against Dr. Schneider  
7 individually? What's your view on the merits of that?

8 A. Well, I don't think that's particularly good, either,  
9 for the same reason. Meridian, however, did file for  
10 relief from the automatic stay in order to liquidate that  
11 claim as part of the arbitration, so in order to deal with  
12 that proof of claim, it's necessary that somebody get  
13 involved in the Meridian arbitration and be ready to go to  
14 Minnesota for two weeks and deal with that.

15 Q. So with this pending settlement, the issue of who goes  
16 and deals with those individual claims, is that up in the  
17 air right now?

18 A. It is, and it's very important that we get it decided  
19 quickly. The discovery is set to close in the arbitration  
20 around May 10th or 15th, I believe it is, so there's a need  
21 to get something done in that regard as well as get ready  
22 for Minnesota in June.

23 MR. GARDNER: Your Honor, may I approach with  
24 exhibits?

25 THE COURT: You may.

1 MR. GARDNER: In order to short-circuit a little  
2 bit, I would move the admission of Trustee's Exhibits 1  
3 through 6.

4 THE COURT: Are there others or do you want me to  
5 deal with those first?

6 MR. GARDNER: I was just going to deal with those  
7 first.

8 THE COURT: Okay.

9 MR. GARDNER: The others I'll address as I go.

10 THE COURT: Any objection to Trustee's Exhibits 1  
11 through 6?

12 UNIDENTIFIED SPEAKER: No objection.

13 UNIDENTIFIED SPEAKER: No objection.

14 THE COURT: Hearing no objection, they're  
15 admitted.

16 Q. (By Mr. Gardner) Mr. Womack, could you look under  
17 Tab B in, in that notebook, Exhibit 21?

18 MR. GARDNER: This is Meridian's Exhibit 21.  
19 It's Doc No. 285-33. It's the first amended complaint in  
20 AP 15. And I would move its admission.

21 THE WITNESS: Yes, okay.

22 THE COURT: You're offering Exhibit 21?

23 MR. GARDNER: Yes.

24 THE COURT: Any objection?

25 (No audible response.)

1 THE COURT: Hearing none, Exhibit 21 is admitted.

2 Q. (By Mr. Gardner) Can you --

3 THE COURT: Mr. Gardner, do you have these -- I  
4 was just looking for the docket entry where you got your  
5 exhibits.

6 MR. GARDNER: My docket entry is 290, I believe.

7 THE COURT: Two ninety, okay.

8 MR. GARDNER: Yeah, 290-1 through 6.

9 MR. JAMES: Excuse me, Your Honor. We have a  
10 paper copy of Meridian's exhibits which Mr. Gardner is  
11 referring to. Would the Court like a paper copy?

12 THE COURT: Oh, if you have an extra copy, sure,  
13 you may approach.

14 Just so there's no question for the record, the  
15 exhibits in the docket are the official exhibits, so --  
16 thank you.

17 MR. GARDNER: May I proceed?

18 THE COURT: You may.

19 Q. (By Mr. Gardner) Would you briefly describe to me  
20 AP 15 and what it was -- or is?

21 A. This exhibit is the first amended complaint filed in  
22 AP 15-15. This is -- was the fraud/alter ego complaint  
23 filed by myself against Schneider Limited Partnership,  
24 other entities and individuals.

25 Q. And generally describe to me kind of the facts and what



1 led to the filing of this complaint, briefly.

2 A. I'll try. Basically, it was: After investigating this  
3 matter, I believed that Dr. Schneider, his wife, his  
4 attorneys, other individuals had been involved in a series  
5 of transactions that were designed to shield effectively  
6 100 percent of his nonexempt assets from creditors over the  
7 course of a two-and-a-half - three-year period prior to the  
8 filing of his bankruptcy.

9 He engaged in multiple transactions and directed  
10 multiple transactions in order to accomplish that goal.  
11 This complaint was designed to try to set those transfers  
12 aside and obtain assets for the benefit of the creditors of  
13 the estate.

14 Q. And I want to briefly talk about some of the claims.  
15 On page 22, Count 1, substantive consolidation, tell me  
16 about that claim.

17 A. Dr. Schneider had a number of -- two primary entities  
18 that he used in this -- in these series of transactions  
19 that he engaged in -- or three, I guess would be more  
20 proper: We had Schneider Limited Partnership; Schneider  
21 Management, which is the managing entity of Schneider  
22 Limited Partnership; and he had a third entity called  
23 "MedPort, LLC."

24 Q. And the ownership of Schneider LP, what was it roughly,  
25 the underlying ownership of it?

1 A. Schneider LP or Schneider Limited Partnership was  
2 49-point-something percent with Michelle Schneider, his  
3 wife; and 49 percent, roughly, and some extra with John  
4 Schneider -- excuse me, John Schneider Revocable Trust and  
5 Michelle Schneider Revocable Trust as to her interest; and  
6 then Schneider Management held about a 1 percent interest  
7 in Schneider LP.

8 Q. And what about Schneider Management? What was the  
9 ownership of that?

10 A. That was originally held by John Schneider, I believe.  
11 Was it not?

12 Q. (Inaudible.)

13 A. Or if I'm mistaken about that, correct me. Ultimately,  
14 it went to Kathleen Burrows and then over to Michelle.

15 Q. For the management of Schneider Management. But the  
16 underlying ownership, was it also 50/50 between the John  
17 trust and Michelle trust?

18 A. Yes, yes, but the person acting as the manager was  
19 changed over time.

20 Q. And as to MedPort, did -- on paper, did John Schneider  
21 ever own any interest in MedPort?

22 A. He did not.

23 Q. And who -- it's changed over the years, but generally,  
24 who held the ownership of MedPort?

25 A. Michelle Schneider and Brandon Schneider, their son,

1 primarily. And I think the children had -- or, excuse me,  
2 the trusts also were involved with --

3 Q. That would be the children's revocable trust?

4 A. That's correct. There were revocable trusts for each  
5 of their children set up in 2012, and those trusts held  
6 interests in MedPort.

7 Q. Did you say "revocable" or "irrevocable"?

8 A. They were irrevocable trusts. I apologize.

9 Q. So what was the point of Count 1, substantive  
10 consolidation?

11 A. We believe that they were operating these entities as a  
12 single economic unit, and so we were seeking to pull all of  
13 the assets involved in each of those entities into the  
14 bankruptcy estate along with Dr. Schneider for the benefit  
15 of creditors.

16 Q. Okay. And Count 2 is alter ego and reverse piercing.  
17 Is that roughly similar theories with similar goals?

18 A. Correct.

19 Q. Okay. Now, there's also various fraudulent transfer  
20 claims. What were some of the assets that you were going  
21 after via these fraudulent transfer claims?

22 A. Okay. The primary assets were what is known as the  
23 "Whispering Winds Ranch," which is property located between  
24 Powell and Cody, Wyoming, that had substantial value; there  
25 was the Tommy Armour house, which is their personal

1 residence located in Billings, Montana; and then there  
2 were -- there's the MedPort property.

3 They purchased a residence in California, the entity  
4 itself purchased that residence in California where  
5 Michelle Schneider resided with Dr. Schneider and their  
6 children.

7 Q. And if you --

8 A. There were a lot of other assets that I'm not touching  
9 on. Relatively speaking, they're, they're not  
10 insubstantial, but relative to those assets, their value is  
11 significantly less.

12 Q. Okay. And so those are the main assets you've  
13 identified now. The complaint lays out the various paths,  
14 I believe, through which you believe the money has gone to  
15 end up in these assets. Was there a loan from Schneider  
16 Limited Partnership to MedPort that you were trying to  
17 avoid as well?

18 A. Yes. MedPort borrowed money from Schneider Limited  
19 Partnership and then used those funds to -- it was in  
20 excess of the 2 million bucks. They used those to purchase  
21 the house in California. Originally, there was a note back  
22 from MedPort to Schneider Limited Partnership that was  
23 subsequently amended that required no payments for a  
24 significant period of time, including interest or  
25 principal.

1 Q. And roughly speaking, was there somewhere between 3 --  
2 somewhere north of \$3.5 million went from Schneider Limited  
3 Partnership to MedPort?

4 A. Yes. The house was purchased for about 1.9, and the  
5 other money, I'm not sure where it's gone.

6 Q. Okay. Are there also other claims? I don't want to  
7 walk through every claim in the amended complaint, but are  
8 there claims for breaches of duties, and conspiracy, and  
9 negligence, and things of that nature?

10 A. Yes.

11 Q. And all aimed at recovering assets that either flew --  
12 flowed from Dr. Schneider or Schneider Limited Partnership?

13 A. Yes.

14 Q. Would you say that AP 15 is a complicated case?

15 A. Very complicated, it's very complicated.

16 Q. What has occurred so far?

17 A. Well, got the complaint filed. There have been -- was  
18 a motion to withdraw the reference. Judge Waters in the  
19 Federal District Court - (inaudible) - rule on that.

20 At this point, we haven't engaged in substantial  
21 discovery relative to AP 15. We are still at the point  
22 where we need a -- the mediation kind of derailed  
23 everything in terms of going forward. We're really at the,  
24 at the beginning of the process.

25 Q. The order on the motion to withdraw the reference that

1 Judge Waters issued, it's Tab 6 under Tab A in that  
2 notebook if you, if you need to look at it. It's --

3 A. (Inaudible.)

4 Q. -- 290-6. Basically, what does that order mean for  
5 AP 15?

6 A. Well, it means that the Bankruptcy Court and --  
7 currently, Judge Kirscher is to deal with pretrial matters  
8 relative to discovery and is to actually try the issue of  
9 substantive consolidation that's been presented. The  
10 actual jury trial, though, of this matter will be held in  
11 front of Judge Waters at the federal district court level.

12 Q. Okay. So, in essence, we're going to have to have a  
13 hearing or trial on the substantive consolidation claims in  
14 the bankruptcy court?

15 A. Yes.

16 Q. And then anything that's remaining, we're going to have  
17 to have a jury trial in district court?

18 A. Yes.

19 Q. I think you mentioned we have not yet engaged in  
20 substantial discovery. Is that accurate?

21 A. That's correct.

22 Q. Do you anticipate that there will be substantial  
23 additional discovery?

24 A. I do. This is, in significant part, an accounting  
25 case, and we're going to have to retain forensic

1 accountants. We're going to have to engage in large  
2 numbers -- we're going to have to engage in a lot of  
3 discovery relative to that accounting that's provided in  
4 the transfers that occurred and the accounting that  
5 occurred between the entities. We're going to have to take  
6 depositions of the accountants that have been involved in  
7 this matter.

8 To the extent that it's permitted, we will need to  
9 engage in discovery of the attorneys that were involved  
10 with Dr. Schneider. There's a lot of issues with respect  
11 to that on attorney-client privilege and who holds it,  
12 whether it's myself or Dr. Schneider.

13 Kathleen Burrows is in California. I'm sure that -  
14 (inaudible) - counsel will want to take her deposition.  
15 That will have to be taken care of.

16 We have all kinds of documents from various banks that  
17 are at issue in these cases that we'll have to wind through  
18 in terms of making sure that we can get all those admitted  
19 into evidence.

20 Q. Are there complicated jurisdictional and Stern issues?

21 A. Complicated -- sorry?

22 Q. Jurisdictional and Stern issues.

23 A. Yeah. It's, it's -- there's a lot of -- there's going  
24 to be appeals, I guess is what's going to happen, from  
25 various rulings that occur.

1 Q. Substantive consolidation, is that a rather complicated  
2 issue?

3 A. Oh, yes.

4 Q. And are there also numerous issues related to the  
5 corporate interests involved and the ownership and the  
6 spousal interests in the assets?

7 A. Yeah, there are a lot of issues with respect to that.  
8 This isn't a simple case where it was just all owned by  
9 Dr. Schneider. His wife Michelle had an interest in  
10 Schneider Limited Partnership that goes back some years  
11 through her revocable trust and Dr. Schneider's revocable  
12 trust, and then you have the marital interest in the house  
13 in Montana, the marital -- the -- her interest in MedPort  
14 as the spouse. There's going to be a lot of issues to wind  
15 through.

16 Q. Are the funds being vigorously defended?

17 A. Yes, they are. Counsel on the other side, they're good  
18 attorneys, they're smart, they do a good job, they're  
19 thorough. So far, they have fought us every -- as much as  
20 they can every step of the way, and I fully expect that  
21 they will continue to do that as this proceeds.

22 Q. Do you anticipate that AP 15 will be lengthy  
23 litigation?

24 A. I do, to finally go through and be able to -- I  
25 think -- I believe we ultimately will recover, but I have



1 concerns about that recovery. For example, Whispering  
2 Winds Ranch is vacate now. There's maintenance, property  
3 tax. We want to get that, we want to get it liquidated, we  
4 want to get the assets for the estate. The Tommy Armour  
5 house is also vacant in Montana, here in Billings.

6 There's a lot of expenses associated with real  
7 property. Those assets need to be dealt with as quickly  
8 and as soon as possible.

9 Q. And as far as the litigation, do you have any doubt  
10 that if you're successful, there will be a subsequent  
11 appeal?

12 A. I have no doubt.

13 Q. All right. The settlement, tell me about how the  
14 settlement came about.

15 A. Well, I think all the attorneys recognized that this  
16 was going to be a very expensive procedure. You know, your  
17 firm has this on a contingency fee basis, but the costs of  
18 litigation are going to be substantial. I have no doubt  
19 that that -- the costs for AP 15 will eat up all of the  
20 money that the estate currently has from the Burrows -  
21 (inaudible) - and the sale of some other smaller motorized  
22 vehicles.

23 Q. Is it, is it essentially -- is that the case on both  
24 sides?

25 On your side, it's eating up whatever assets the estate

1 has. On the defendant's side, does the ongoing litigation  
2 affect the potential for the value of your future recovery?

3 A. Well, I believe so because the defendants are -- they  
4 need to pay their attorneys, and so they're going to be  
5 using assets in every way that they can in order to get  
6 their counsel paid. And this is going to be expensive  
7 litigation that's going to go on for a long time, and I  
8 have no doubt that it will eat up substantial amounts of  
9 assets that we would like to recover right now in the case,  
10 so --

11 Q. Meaning that there's a, kind of a finite pool of  
12 assets, does every dollar spent on litigation decrease --

13 A. Yes.

14 Q. -- what's available for ultimate recovery?

15 A. Yes.

16 Q. So the decision was made to engage in a mediation. Who  
17 was retained to act as mediator for that?

18 A. A Leif -- I forgot his last name. He's --

19 THE COURT: Clark?

20 THE WITNESS: Yes, thank you. He's a very good  
21 mediator. We've talked back and forth, reached an  
22 agreement regarding -- (inaudible.)

23 Q. (By Mr. Gardner) Is he a retired judge?

24 A. Sorry?

25 Q. Is Leif Clark a retired judge?

1 A. Yes, a bankruptcy judge from Texas.

2 Q. Okay. And before engaging in the mediation, did you  
3 consider the creditors' interests or views or talk to their  
4 counsel at all?

5 A. I did, and I just want to explain a little bit about  
6 that. Okay?

7 I -- the counsel on the other side, the defendants,  
8 wanted to also engage in mediation with respect to AP 20,  
9 the dischargeability complaint, and do those both at the  
10 same time. Before I agreed to that, I talked with the,  
11 what I'll call the "personal injury claimant's counsel."  
12 Andy Patten primarily is who I was speaking with.

13 It was my understanding, based on conversations, that  
14 if we were able to get a substantial amount of assets in  
15 the case on the table, that they would consider consenting  
16 to the settlement notwithstanding the fact that  
17 Dr. Schneider wanted to receive his discharge.

18 Now, I didn't have a written agreement or anything like  
19 that - they wanted to look at the final product - but that  
20 was my understanding going into the settlement.

21 Q. And to be fair, they certainly didn't say, "Yeah, we'll  
22 agree," or anything, but from your understanding, was it a  
23 possibility?

24 A. Definitely a possibility. And I did know that I was  
25 going to receive an objection from Meridian and the U.S.

1 Trustee's Office, but given the nature of Meridian's claim  
2 and my view on that claim and the deference to the  
3 interests of the creditors, I decided to proceed forward  
4 anyway.

5 Q. Okay. And where was the mediation held?

6 A. At the Northern Hotel here in Billings.

7 Q. And how long did the mediation last?

8 A. Two long days. We didn't finally get the agreement  
9 signed until around midnight on the second day.

10 Q. And was -- sort of very -- I don't want to get into  
11 specifics, but during that process, did you, and your  
12 counsel, and the mediator, and those involved engage in a  
13 thorough, an in-depth consideration of all of the issues  
14 attendant to this litigation?

15 A. Yes, we did. I think so, I think we really did.

16 Q. And at the end of the day, a settlement was reached.  
17 You talked earlier about the primary assets. Sorry, I'm  
18 getting an echo.

19 Could you look at Trustee's Exhibit 2? This is  
20 Document 290-2. And could you turn to page 19?

21 A. Yes.

22 Q. What is that document?

23 A. Well, before we agreed to a settlement, we wanted a  
24 sworn statement from Dr. Schneider and Michelle regarding  
25 the assets that they held, primary assets that they held.

1 So in the course of that, this was provided to us, and it  
2 was attached to the settlement agreement.

3 Q. This is a list of assets of the debtor, Michelle, and  
4 the various entity defendants that they were asked to come  
5 up with for, for purposes of settlement, correct?

6 A. That's correct.

7 Q. And generally, is this list consistent with what you  
8 had previously identified in your investigations as the  
9 universe of potential targets for recovery?

10 A. Yes. As I mentioned earlier, it's not down to the  
11 penny, it doesn't take care of minor -- some smaller assets  
12 like vehicles, that sort of thing, but in terms of the  
13 major assets, it is consistent.

14 Q. And as far -- you talked earlier about three major  
15 assets. I want to, I want to run through those really  
16 quick. There was first the Billings house.

17 A. Yes.

18 Q. And what's your value on the value of the Billings  
19 house?

20 A. I think it's worth about 650,000, roughly.

21 Q. Okay. And is that owned by John and Michelle?

22 A. Yes, hm-hmm.

23 Q. And is there an encumbrance on the Billings house as  
24 well?

25 A. Yes. The children's trusts hold a -- have a judgment

1     lien that they obtained from Wells Fargo Bank that is  
2     against the house.

3     Q.   And is that somewhere in the 650,000 to \$700,000 range?

4     A.   Yeah, it's a little less than that.  It's -- there's a  
5     little bit of equity in the house over and above that,  
6     but --

7     Q.   And then the second asset was the Whispering Winds  
8     Ranch.  What is that?

9     A.   Okay.  At the time that the bankruptcy was filed but  
10    prior to the settlement, it consisted of the main house,  
11    the riding arena, a barn, acreage down in that area, a  
12    guesthouse, and some acreage associated with that.

13         I'm -- it was worth a substantial amount of money, you  
14    know, well over a million bucks, a million bucks.

15    Q.   Okay.  And since the bankruptcy has been filed, the  
16    guesthouse and a small portion of the acreage has been  
17    sold?

18    A.   That's correct.

19    Q.   And there was an agreement that those funds would be  
20    held in trust pending the outcome?

21    A.   Yes.

22    Q.   And how much are those funds?

23    A.   I was afraid you were going to ask that.  I'm trying to  
24    remember.  I'm thinking it was in the neighborhood of 350.

25    Is that right?

1 THE COURT: You have to answer the question.

2 THE WITNESS: Yes, 350,000. Sorry.

3 Q. (By Mr. Gardner) And those are in my trust account, so  
4 I would know the exact number better than you?

5 A. That's correct.

6 Q. You're correct.

7 A. Thank you.

8 THE COURT: Let's just keep straight who's  
9 testifying here.

10 MR. GARDNER: I apologize, Your Honor.

11 Q. (By Mr. Gardner) The remainder of the Whispering Winds  
12 Ranch is still on the market, correct?

13 A. It is.

14 Q. And what -- do you recall approximately what kind of  
15 value you placed on the Whispering Winds Ranch or what it's  
16 on the market for?

17 A. I believe it was about 1.2 million, right in that  
18 neighborhood. It's subject to what we can get for it.  
19 1.5, right in that neighborhood.

20 Q. Okay.

21 THE COURT: Excuse me. Is that listed?

22 THE WITNESS: Sorry?

23 THE COURT: Is it listed?

24 THE WITNESS: It is, Your Honor.

25 THE COURT: Okay.

1 MR. GARDNER: It's listed for 1.749.

2 THE WITNESS: We think, we think we can get that  
3 much, or maybe 1.5.

4 THE COURT: What's it listed for?

5 THE WITNESS: It's listed for 1.7. We may have  
6 to take a little bit less to get it sold sooner than later.

7 THE COURT: There's debt on the property?

8 THE WITNESS: Sorry?

9 THE COURT: Any debt?

10 THE WITNESS: No.

11 Q. (By Mr. Gardner) Is there a mortgage against the  
12 property, though?

13 THE CLERK: Excuse me, we have lost our recording  
14 equipment again, Judge. One minute, please.

15 THE COURT: Okay, just a moment.

16 (Pause in proceedings.)

17 THE CLERK: Judge, we're back on. If you could  
18 go back to the amount that it was listed for, is when we --  
19 our equipment shut down.

20 BY MR. GARDNER:

21 Q. Mr. Womack, do you recall approximately what the  
22 remainder of the Whispering Winds Ranch was listed for?

23 A. About \$1.7 million.

24 Q. Okay. And is it your understanding that the realtor  
25 believes he can achieve somewhere near that number in the



1 sale?

2 A. Yes.

3 Q. Now, could you -- we're looking at Trustee's Exhibit 2.

4 Could you look at page 2 of that document?

5 A. Page 2?

6 Q. Yes.

7 A. Okay.

8 Q. And these are the terms of the settlement. Could you

9 look at Paragraph 2(d)?

10 A. Yes.

11 Q. (Quoted as recorded): "MedPort shall release its

12 mortgage against the Wyoming property."

13 Does that refresh your recollection about whether or  
14 not there was a mortgage against the Whispering Winds  
15 Ranch?

16 A. Yes.

17 Q. And it was held by MedPort?

18 A. Yes.

19 Q. Okay. And then the other major asset, I believe you  
20 mentioned the California house.

21 A. Yes.

22 Q. And who is that owned by?

23 A. MedPort.

24 Q. And do you recall approximately what the purchase price  
25 of that home was?

1 A. 1.2 million, I believe.

2 Q. Okay. Now, I want to walk through the specific terms  
3 of the settlement for AP 15, and we'll just walk through  
4 these paragraphs. Paragraph 2(a), in settlement of AP 15,  
5 what happens to the Billings house?

6 A. It becomes property of the bankruptcy estate. That  
7 includes Michelle's one-half interest, Dr. Schneider's  
8 one-half interest. The liens against that property held by  
9 the irrevocable children's trust is released so that the  
10 entire value comes into the bankruptcy estate.

11 Q. And that happens through the settlement of both AP 15  
12 and AP 20, correct?

13 A. Correct.

14 Q. And as far as AP 20, what portion was attributed to  
15 AP 20, the settlement of that?

16 A. We estimated that at \$450,000, based on the \$250,000  
17 homestead exemption that could be claimed by John and  
18 Michelle Schneider, and the one-half interest in the  
19 remainder equity property held by Michelle Schneider.

20 Q. Okay. So any equity above that 450 is attributable to  
21 the AP 15 settlement?

22 A. That's correct. That's the difference between the 450  
23 and the 650.

24 Q. Okay. And 2(b), I think you already mentioned that the  
25 children's trust released the judgment lien. Correct?

1 A. That's correct.

2 Q. 2(c), what is 2(c)? What happens with the Whispering  
3 Winds Ranch?

4 A. The Whispering Winds Ranch also comes into the  
5 bankruptcy estate. Any mortgage or liens held by MedPort  
6 or any other entities are released so that the estate has  
7 that property free and clear of, of those interests.

8 Q. And at -- on the Whispering Winds Ranch, is it your  
9 understanding that the realtor has actually had some  
10 inquiry and interest in recent weeks?

11 A. Recently, he has. Actually, and I want to say that the  
12 realtor did indicate recently that he felt that if we're  
13 patient, we could get the full listing price for that. We  
14 need to be patient about that.

15 Q. Okay.

16 THE COURT: Mr. Gardner, could you go back on the  
17 Billings house and just clarify again with just a couple of  
18 questions, maybe, as it relates to the 450, the 200, the  
19 650, and the allocation that has been commented about  
20 between 15-15 and 15-20?

21 MR. GARDNER: Yes. And, Your Honor, if you want  
22 to clear something up if I don't ask it correctly, feel  
23 free to interrupt me.

24 Q. (By Mr. Gardner) What is the value of the Billings  
25 house?

1 A. About 650,000 is our estimate.

2 Q. And do the debtor and Michelle Schneider claim a  
3 \$250,000 homestead in that house?

4 A. They do.

5 Q. And does Michelle Schneider also claim a half-interest  
6 in any equity above the 250,000?

7 A. She does.

8 Q. And so if the value is 650,000 and the homestead is  
9 250,000, there's how much in equity?

10 A. Four hundred thousand.

11 Q. Okay. And so Michelle claims 200,000 of that equity?

12 A. Correct.

13 Q. Okay. And so as far as AP 20 from the Billings house,  
14 what value is attributed to the settlement of AP 20?

15 A. Dr. Schneider's half-interest in the house, including  
16 the homestead portion -- or, excuse me, the \$250,000  
17 homestead declaration portion from both Michelle and  
18 Dr. Schneider, and the \$200,000 from Michelle for her  
19 equity interest over and above the homestead.

20 Q. Okay. So that's attributable to what was provided to  
21 settle the discharge action, correct?

22 A. Right. Our analysis was that it would be difficult, if  
23 not impossible -- it would be very difficult; not  
24 necessarily "impossible," but difficult to get Michelle's  
25 half interest in that homestead property. And it would

1 all -- it would be equally difficult and probably  
2 impossible to get the homestead portion of that property.  
3 Q. Okay. And that's why it was attributable to settlement  
4 of the non-discharge action.

5 A. That's correct.

6 Q. Okay.

7 A. We wanted something that was something that we didn't  
8 think creditors or the estate could get either through  
9 AP 15 or, if discharge is denied, in subsequent actions by  
10 creditors or the estate, some property and value that they  
11 could get.

12 Q. Okay. And so the remaining, you believe, value is  
13 200,000, and that is the debtor's interest in the equity  
14 which is attributable to AP 15?

15 A. That's correct.

16 MR. GARDNER: Okay. Your Honor, did --

17 THE COURT: Yeah, thank you.

18 Q. (By Mr. Gardner) 2(e) on the settlement agreement is  
19 simply a cooperation clause.

20 2(f) deals with the approximately \$350,000 in the trust  
21 account. And tell me what happens with that 350,000.

22 A. Well, 60,000 goes to the estate and 290 to Michelle,  
23 but if we have -- we also -- that interacts with (g) and  
24 (h) below.

25 Q. And tell me about that. (g) and (h) deal with this

1 thing called a "KBR REIT." What is that?

2 A. Schneider Limited Partnership had an investment in a  
3 real estate investment trust of some sort. There were some  
4 questions about being able to liquidate that interest, how  
5 long it might take to do that. So we had a dollar value  
6 for that investment trust. It was agreed that we would get  
7 the proceeds from that.

8 Q. What was the dollar value of that?

9 A. It was about \$180,000.

10 Q. And if it turned out that that investment was illiquid,  
11 couldn't be liquidated, then what happened?

12 A. We would get the money from the money -- get the money  
13 from the Goetz law firm trust account rather than that.

14 Q. Okay. So in the event the KBR REIT is illiquid and  
15 can't be liquidated, then the estate gets 240,000 from the  
16 moneys held in the trust account, correct?

17 A. That's correct.

18 Q. And Michelle would get the remaining 110,000.

19 A. That's right.

20 Q. All right. 2(i), there's a \$123,000 tax refund. What  
21 happens with that?

22 A. Split between the parties, between the trustee, the  
23 estate, and Michelle Schneider.

24 Q. Okay. 2(k), the assignment of the interest in  
25 Schneider LP and Schneider Management, what happens with

1 that?

2 A. That all goes to Michelle Schneider.

3 Q. Okay. And as it stands now, is there -- other than the  
4 note from MedPort and the assets the estate's getting in  
5 the settlement, is there much value left in those entities?

6 A. Not in -- well, not in my opinion. There is --  
7 Schneider Limited Partnership does have a claim against  
8 Meridian that it's pursuing, and so that -- it will retain  
9 that. I don't, I really don't have -- I don't know --  
10 there's a lot of factual issues in that claim. I couldn't  
11 attribute any of significant value to Schneider Limited  
12 Partnership's --

13 Q. That's in the Meridian arbitration. And there's claims  
14 by it against Meridian and also by Meridian against,  
15 against the entity?

16 A. Right.

17 Q. Okay. And so the estate's assigning those to Michelle,  
18 correct?

19 A. Correct. There's also a lot of expense attendant to  
20 pursuing those claims on behalf of Schneider Limited  
21 Partnership.

22 Q. 2(1), tell me about Paragraph 2(1). First of all, it  
23 says:

24 The trustee shall abandon any and all interest in  
25 any claims that the estate might have against the following

1 third parties.

2 (i) is: Claims against any third-party professionals  
3 who are prepared to advise the debtor on any matter prior  
4 to the commencement of the bankruptcy estate.

5 Did you investigate potential claims that would fall  
6 within those categories?

7 A. Yes.

8 Q. And what, what kind of third parties are we talking  
9 about as potential targets in those claims?

10 A. Attorneys and accountants.

11 Q. And based on your investigation, did you perceive a lot  
12 of value to the estate?

13 A. No.

14 Q. And did you perceive that possibly there's potential  
15 claims?

16 A. Yes.

17 Q. Why did you not perceive that there was substantial  
18 value to the estate in those claims, and thus you were  
19 willing to assign them as part of this settlement?

20 A. Because if we're successful in AP 15 and setting aside  
21 all of these transfers and recovery against them, then the  
22 work that they did with respect to the estate planning and  
23 asset protection wasn't very good and the estate wasn't  
24 really harmed necessarily by that. On the other hand, if  
25 we were not successful and they did a good job, then there



1 wasn't any malpractice.

2 Q. And would pursuing those claims require substantial  
3 additional litigation?

4 A. Substantial additional litigation. They would be  
5 vigorously defended. The costs would be high, and I didn't  
6 think it was worth it to the estate to go after them at  
7 this -- (inaudible.)

8 Q. And given the ongoing litigation expenses of AP 15,  
9 does the estate have enough funds to also fund separate  
10 litigation against other third parties?

11 A. No. The only way we would have enough funds to do that  
12 is if we were successful in AP 15. Then we would be  
13 looking at statute of limitation issues, problems in that  
14 regard.

15 Q. Okay. So your conclusion was: Overall, it was not  
16 something of substantial value you were giving up in the  
17 settlement?

18 A. That's correct. But it was worth something to  
19 Dr. Schneider and Michelle, so we gave that to them.

20 Q. And what about (2), claims of Schneider LP, Schneider  
21 Management, MedPort, BSC, NRMS, and the children's trusts?

22 A. Well, we already talked about those. Those were just  
23 generally designed to clean up any possible claims that any  
24 of those entities might have against any other individual.  
25 The only principal one that I saw there was Schneider

1 Limited Partnership against Meridian.

2 Q. And the point of the settlement was to give a clean  
3 break between the estate and these various entities it's  
4 settling with?

5 A. That's right. I mean, you know, MedPort had a lien  
6 against the Whispering Winds Ranch, and the children's  
7 trusts had liens against the house in -- Tommy Armour  
8 house. That obviously is being given up, those are gone.  
9 Any other claims they might have between each other, they  
10 can just deal with it all.

11 Q. Okay. And then (n) -- or actually, (l)(iii), the  
12 claims against Meridian --

13 A. Right.

14 Q. -- is that what you talked about earlier, first on the  
15 individual claims the -- that are assigned to the debtor?

16 A. Yes.

17 Q. And in return for getting those individual claims, what  
18 does the debtor have to do with respect to Meridian's claim  
19 back against the estate?

20 A. That's dealt with in Paragraph 3(ii): In the event the  
21 estate's claims abandoned to him or settled, the settlement  
22 requires that Meridian withdraw its proof of claim in the  
23 Schneider bankruptcy estate.

24 Q. Okay. And is the debtor also required to fully defend  
25 that claim in good faith?

1 A. Yes.

2 Q. Okay.

3 THE COURT: What if, what if he doesn't?

4 THE WITNESS: Good question, Your Honor. I think  
5 we would have a claim against him for breach of the  
6 agreement, but beyond that, there's no provision in the --  
7 specifically talking about liquidated damages or otherwise.

8 Q. (By Mr. Gardner) The claim back against him, those two  
9 claims in that arbitration, are they essentially mirrors of  
10 each other?

11 A. Basically.

12 Q. And so if Dr. Schneider is successful in pursuing his  
13 individual claim against Meridian, does that essentially,  
14 in effect, defeat Meridian's claim back against the estate?

15 A. Yeah.

16 Q. And was that a consideration in agreeing to this  
17 provision?

18 A. Yes.

19 Q. I mean, in essence, can you envision a scenario where  
20 the liability goes both ways?

21 A. Yes. If there is liability, I would think that it  
22 would go both ways. I think Meridian might have a claim  
23 against Schneider and Schneider against him.

24 THE WITNESS: This has been a difficult area for  
25 me, Your Honor. Early on, I assessed the claim, decided I

1 didn't have any money to defend it. I talked to a number  
2 of attorneys about handling it on a contingency fee basis.  
3 They all refused.

4 So Meridian filed its motion to modify stay, and  
5 so we agreed to that so they could go forward with the  
6 arbitration and deal with that. I just don't have the  
7 money to participate in the arbitration. I'm aware of the  
8 problems associated with that. (Inaudible) -- \$3 million  
9 claim in the bankruptcy, and I feel like I'm a little bit  
10 hogtied in terms of dealing with it.

11 Q. (By Mr. Gardner) Addressing the judge's concern,  
12 Dr. Schneider has an incentive to vigorously pursue his  
13 claim, individual claim against Meridian because he's  
14 getting that in this settlement, correct?

15 A. Yes. And it's my understanding and belief that he  
16 believes that that claim has value and that he intends to  
17 do that.

18 Q. And in vigorously pursuing that claim against Meridian,  
19 if he's successful on that, in effect doesn't that  
20 necessarily defeat their claim against, back against the  
21 estate?

22 A. Right, their claims and counterclaims against each  
23 other, they derive from the same factual set of facts.

24 Q. And did that provide you some confidence that the claim  
25 against the estate will, in fact, be defended in good

1 faith?

2 A. Some.

3 THE COURT: Well, was that claim against him a  
4 prepetition claim that will be discharged?

5 THE WITNESS: Yes, but the concern was that the  
6 claim against -- against him, it could be discharged, but  
7 there's a right of offset, is there not, even so regardless  
8 of the discharge within the arbitration? I think.

9 And my concern was if the -- now, if he -- if  
10 they're successful against him and he's not against them,  
11 so be it, then that's a claim the bankruptcy estate --  
12 (inaudible.)

13 Q. (By Mr. Gardner) And let's, let's touch on that a  
14 little more. As you understand the Meridian litigation,  
15 would it be fair to say that there's Dr. Schneider and  
16 Schneider LP and the other investors who claim that the  
17 center failed because of what Meridian did?

18 A. What they failed to do.

19 Q. Or what they failed to do. On the other side of it, is  
20 Meridian claiming that it failed because of what  
21 Dr. Schneider did?

22 A. Yes.

23 Q. Okay. And so in order to be successful, Dr. Schneider,  
24 Schneider LP, and the other investors all have to prove  
25 that it failed because of what Meridian didn't do versus

1 what Dr. Schneider did, correct?

2 A. Yes.

3 Q. And so besides Dr. Schneider defending his actions, are  
4 the other investors also --

5 MR. JAMES: I'm going to object, Your Honor.  
6 These questions are leading, and it would appear that  
7 Mr. Gardner is testifying rather than the trustee.

8 THE COURT: I'll sustain that.

9 MR. GARDNER: Okay.

10 Q. (By Mr. Gardner) You're more familiar with the  
11 Meridian litigation than I am, correct?

12 A. Yeah, I think so. I've been --

13 Q. Do the other parties on the same side of the "v." as  
14 Dr. Schneider --

15 THE CLERK: Excuse me, Mr. Gardner, I'm going to  
16 stop you again. We've lost our recording.

17 I'm so sorry, Judge.

18 (Pause in proceedings.)

19 THE CLERK: Mr. James, if you could please state  
20 your objection again.

21 MR. JAMES: Yes. Doug James, object on the  
22 grounds that the questions are leading and that Mr. Gardner  
23 appeared to be testifying instead of the trustee.

24 THE COURT: And I sustained it.

25 But I have a question for you, Patti. This is as

1 it relates to CourtSpeak and not as to our recording  
2 system, right, FTR Gold?

3 THE CLERK: No, Judge. We're having trouble with  
4 FTR Gold. They put a new computer in here.

5 THE COURT: Okay, okay.

6 THE CLERK: And we've had Ali [phonetic] down  
7 here twice, Your Honor, and she can't really figure it out.  
8 It quits for like 30 seconds and then starts up again. So  
9 I'm deeply sorry to all the parties.

10 THE COURT: (Inaudible) -- posted.

11 THE CLERK: Will do, Your Honor.

12 THE COURT: Mr. Gardner, I think you had then  
13 went on to indicate that Mr. Womack had probably as much  
14 information about the Meridian claims as anyone, and you  
15 were --

16 MR. GARDNER: Certainly more so than me. I'm  
17 just trying to ask the right questions, and I'll rephrase  
18 the question.

19 Are we back on?

20 THE COURT: We are back on, as I understand it.

21 MR. GARDNER: Oh, okay.

22 Q. (By Mr. Gardner) In agreeing to assign this claim to  
23 Dr. Schneider as part of the settlement and getting back  
24 his covenant that he would defend the claims in good faith,  
25 besides his personal incentive to defend those claims as

1 part of his prosecution, were there any other factors about  
2 the arbitration that gave you some comfort that the claims  
3 against the estate would be adequately defended?

4 A. Some comfort. I want to -- I mean, I need to be clear  
5 here. I'm not confident that Dr. Schneider is capable of  
6 adequately defending this really, but there are some, there  
7 are some factors that make me - (inaudible) --

8 THE COURT: Mr. Womack, you might pull that mic a  
9 little closer.

10 THE WITNESS: -- yeah, that, that they'll be  
11 dealt with properly.

12 As I testified earlier, Meridian Surgical  
13 Partners, there were two entities. There was one from  
14 Nashville, Tennessee, and then there was one formed in  
15 Montana for the purposes of working with doctors from the  
16 Cody area, including Dr. Schneider, to build the Omni  
17 center, surgical center.

18 Part of that required that they get transfer  
19 agreements in order to transfer patients, if they needed  
20 them, to emergency room and hospital care services. They  
21 never were able to get that. So even though they built the  
22 surgical center, they were never able to open because they  
23 did not have a transfer agreement.

24 The whole transaction broke down at that point in  
25 time and the parties were then engaged in determining who



1 was at fault, who was responsible for getting the transfer  
2 agreement, and why it wasn't obtained.

3 The doctors and the investors in the project --  
4 the actual investors in the project were blaming Meridian  
5 Surgical Partners, the two entities, saying that they were  
6 responsible to get it. And Meridian Surgical Partners  
7 first denied that they were primarily responsible and then  
8 they also have pointed to Dr. Schneider and said that his  
9 actions throughout this transaction were responsible for  
10 the denial of the transfer agreement.

11 They have pointed to the fact that he was a  
12 surgeon in Billings, Montana, at both -- had privileges at  
13 both hospitals. He left, under what circumstances are  
14 unclear. He was not able to go back and have privileges  
15 there. He was not willing to go back and obtain privileges  
16 there for purposes of the Omni center because he would be  
17 on all for 24 hours a day.

18 The medical doctors were saying that Meridian  
19 assured them that they would be able to get it, the  
20 transfer agreement, and they would be able to open without  
21 any of them having to be admitted and be on call for 24  
22 hours a day.

23 So when Dr. Schneider had problems in Wyoming  
24 with what I'll refer to as "Jimmie Biles libel litigation,"  
25 it became public that, that -- that's a whole other story,

1 but he lost his -- he was sued by an orthopedic surgeon  
2 named Jimmie Biles for slander and libel. Ultimately, that  
3 case was settled. His attorney was censured for failure,  
4 for basically failing to disclose --

5 MR. COSSITT: Objection, Your Honor. This answer  
6 goes far beyond the scope of the question, and it's  
7 rambling, and now it's getting into information that is not  
8 necessary for the Court's consideration under the  
9 four-factor test.

10 But the initial objection is: Far outside the  
11 scope of the question.

12 THE COURT: I'll sustain that.

13 THE WITNESS: Sorry, Your Honor. I'm just trying  
14 to get some background --

15 THE COURT: I understand.

16 THE WITNESS: -- as to what happened --

17 THE COURT: I understand.

18 THE WITNESS: -- and what the substance of the  
19 Meridian arbitration claims and defenses are.

20 Q. (By Mr. Gardner) Are there other parties represented  
21 by counsel in the Meridian arbitration that also have an  
22 interest in defending Dr. Schneider's action and proving  
23 that it was Meridian's fault?

24 A. Yeah. Schneider Limited Partnership is one of those  
25 parties and the other medical doctors are involved in that.

1 And they defend and state that it was not Dr. Schneider's  
2 actions that resulted in the failure to get the transfer  
3 agreement.

4 Q. And is that something you considered in agreeing to  
5 this provision of the settlement?

6 A. Yeah, it was.

7 Q. Okay. Paragraph 2(m): The trustee shall abandon any  
8 and all interest in MedPort, NRNS, and BSC.

9 To your knowledge, is there anything -- does BSC have  
10 anything?

11 A. Nothing.

12 Q. What about NRNS? What was Dr. Schneider's surgical  
13 practice.

14 A. The "NRNS" stands for Northern Rockies neurological --  
15 or Neuro-Spine. That was the operating entity that  
16 Dr. Schneider used to work as a surgeon. That entity does  
17 have some claims that were noted by Dr. Schneider in his  
18 schedules; however, if I, if I take over Northern Rocky  
19 Neuro-Spine, there are a lot of issues with respect to  
20 that: HIPAA issues regarding patient records, there are  
21 problems with those claims, and it was my evaluation that  
22 the value of any claims that NRNS had were far exceeded by  
23 its potential liabilities and costs of administration.

24 Q. Now, the third one is MedPort. You're abandoning any  
25 claim to MedPort on -- essentially, what does MedPort own?

1 A. The house in California.

2 Q. And you're giving up your claim to that house, correct?

3 A. That is correct.

4 Q. Is, is that really the meat and potatoes of the  
5 settlement?

6 A. It is.

7 Q. Okay. And that was -- so you get the other major  
8 assets for the estate that you had identified, and they  
9 keep the house in California.

10 A. That's right.

11 Q. Okay. Is the settlement -- well, we should probably  
12 walk through the rest of these provisions.

13 2(n), they stipulate that the, the causes of actions  
14 asserted by the trustee are property of the bankruptcy  
15 estate to the exclusion of any creditor. What was the  
16 purpose of that provision?

17 A. Defendants wanted to ensure that they would not be  
18 faced with, excuse me, other claims made by creditors  
19 outside the bankruptcy against them. And I'm not talking  
20 about Dr. Schneider but the other entities that creditors  
21 would not go against Schneider Limited Partnership,  
22 MedPort, and the other entities that were not owned or  
23 controlled by Dr. Schneider, and that any of these claims  
24 were solely property of the bankruptcy estate.

25 Q. Because the trustee and the estate had already brought

1 these claims in AP 15, correct?

2 A. Right.

3 Q. And so they wanted assurance that they wouldn't face  
4 the same litigation they were settling from some other  
5 party; is that --

6 A. That is my understanding.

7 Q. (o): The trustee shall request an order of the Court  
8 that authorizes and directs the trustee not to share with  
9 any other person or entity any work product with respect to  
10 this adversary.

11 It also contains a substantial exclusion allowing you  
12 to comply with your duties in any order of the Court. Tell  
13 me about that provision.

14 A. Again, they were concerned about tangential claims  
15 being brought against attorneys, entities; did not want the  
16 work product and information that I obtained to be shared  
17 with other parties so that they could be used for those  
18 purposes.

19 However, I pointed out that as a trustee, I've got a  
20 substantial number of duties that require me to provide  
21 information to taxing authorities, to the U.S. Trustee's  
22 Office, whether it be pursuant, you know, to any kind of  
23 concerns that they may have, other federal agencies. So if  
24 I have a job to do as a trustee, then I can provide the  
25 information and give that to them.

1 Q. And it also provides that you can comply with court  
2 orders and enforceable subpoenas, obviously, correct?

3 A. Of course.

4 Q. (p): The trustee agrees in good faith to seek Court  
5 approval of this agreement.

6 That's self-explanatory.

7 (Quoted as recorded): "The trustee agrees he will  
8 accept assignment of real estate listing agreements  
9 executed with respect to the Billings house and the Wyoming  
10 property."

11 What was the purpose of that?

12 A. Well, Dr. Schneider went out and listed the house in  
13 Billings for sale and --

14 MR. COSSITT: Objection, Your Honor; relevance.  
15 This testimony, while interesting, is not relevant to the  
16 four legal standards in the A & C factors test and  
17 accordingly is outside the scope of relevance for this  
18 proceeding.

19 THE COURT: I'm going to overrule that because,  
20 in fact, there's an assignment of these agreements to the  
21 trustee under this agreement. I want to know what's going  
22 on.

23 THE WITNESS: Dr. Schneider and Michelle went and  
24 listed the Tommy Armour house for sale with a realtor and  
25 signed a listing agreement with him postpetition. They

1 were concerned about that, that I would take that over so  
2 that the realtor, Ron Thom, would not have a claim against  
3 them.

4 Q. (By Mr. Gardner) And the Wyoming property is on the  
5 market as well. That's owned by the children's trust, and  
6 so they just didn't want any breach provisions against the  
7 trust for that listing agreement? Is that accurate?

8 A. Yeah, same reason.

9 Q. On (r), the caveats to the - (inaudible) - releases,  
10 what is (r)(i)?

11 A. Well, that's the disclosure provision that if, if an  
12 asset has not been disclosed, as set forth in the exhibit  
13 that we talked about earlier, that I was not precluded from  
14 pursuing that asset or claim against the defendants.

15 Q. So if there are other assets which you have not been  
16 made aware of yet that are out there, then you still have  
17 the power to go after them, correct?

18 A. Correct.

19 Q. Okay. Three is general mutual release of claims  
20 language.

21 Four, that's the contingency provision --

22 A. Correct.

23 Q. -- that implementation of this settlement is contingent  
24 on approval of the AP 20 settlement. Whose -- who demanded  
25 that provision?

1 A. The defendants did. Dr. Schneider's counsel required  
2 that in order to reach any settlement agreement.

3 Q. Were you opposed to such a provision?

4 A. Yes.

5 Q. Was it a necessary provision in order to finalize the  
6 settlements?

7 A. Yes. If I had not done that, nothing would have  
8 happened.

9 Q. So if AP 20 is not -- that settlement is not approved  
10 under the terms of this settlement agreement, this  
11 settlement agreement is also void.

12 A. That's correct.

13 Q. Okay. Tell me about AP 20.

14 A. Okay. Well, I've already talked about the claims that  
15 were brought in AP 20. Pursuant to that, we -- as  
16 discussed, the estate gets a value that we put at about  
17 \$450,000. Dr. Schneider is entitled to receive his  
18 discharge in the case.

19 Q. Okay. Does AP --

20 A. (Inaudible.)

21 Q. Does AP 20 involve a lot of the same factual issues as  
22 AP 15?

23 A. Yes, and some additional ones.

24 Q. Okay. Do you consider AP 20 to be complex?

25 A. It -- not as complex as AP 15, frankly. I think that I



1 can bring AP 20 to conclusion without it being as  
2 complicated as AP 15, but I'm sure that defense will be  
3 vigorous, will require significant discovery and a number  
4 of witnesses, expert witnesses in order to fully litigate  
5 it.

6 Q. Okay. And who has the burden of proof in AP 20?

7 A. I do.

8 Q. And are you being paid by -- on an hourly basis by the  
9 estate to pursue this?

10 A. Yes.

11 Q. And do you have any doubt there will be an appeal if  
12 you're successful in AP 20?

13 A. I'm sure that it will be appealed. Dr. Schneider is --  
14 he wants to try to get a discharge if at all possible. His  
15 counsel are good, and they'll use every legal means that  
16 they have to try to get him that discharge.

17 Q. The settlement that was reached, it's Trustee's  
18 Exhibit 1. Was that reached through the same mediation  
19 process?

20 A. Yes.

21 Q. Okay. And you -- we've, I think we've covered what the  
22 estate is getting out of the settlement of the  
23 non-discharge action. So between the two settlements of  
24 AP 15 and AP 20, can you roughly estimate the value to the  
25 estate that you believe is being provided?

1 A. About 2.5 million bucks.

2 Q. Okay. And in your investigation of the universe of  
3 assets that are remaining out there that you think you have  
4 claims to or essentially all of the assets of the  
5 defendants in the actions, about how much did they add up  
6 to?

7 A. Well, around \$4 million, a little over \$4 million.

8 Q. Okay. And so based on the investigation that you've  
9 done, are you getting more or less than half of what you  
10 perceive potential assets out there at this time are?

11 A. I believe we're getting more than half, so I feel like  
12 it's a fair settlement from a dollars standpoint.

13 Q. Okay. That's where I want to go now, are the four  
14 factors. We've talked about a lot of this, but I want to  
15 touch on all of them.

16 The first factor is probability of success on the  
17 merits. Let's first talk about AP 15. What's your view on  
18 the probability of success on the merits on AP 15?

19 A. I think we'll win, but I think that there are a lot of  
20 issues and the amount of the recovery is questionable in  
21 AP 15. I think that it could be less than what we've  
22 agreed to settle for here.

23 Q. Let's zero in on that. There's a multitude of claims  
24 in AP 15, correct?

25 A. Yes.

1 Q. And do you believe you'll be successful on some of  
2 them?

3 A. Yes.

4 Q. Do you -- are there numerous complicated issues?

5 A. There are many complicated issues with accounting,  
6 legal issues between husband and wife, corporations,  
7 transfers; a lot of complications.

8 Q. And are the defendants -- do they have a lot of  
9 affirmative defenses and are they vigorously defending?

10 A. Yes, they are.

11 Q. Is it going to require substantial expert testimony?

12 A. Yes. As we've already -- as I've already testified to,  
13 we're going to have to retain forensic accountants to  
14 assist us. That will be expensive. The other side will do  
15 the same. It will require numbers of -- quite a few  
16 depositions be taken. It's, it's going to take a long time  
17 to go through and deal with all the legal issues, factual  
18 issues, all those things.

19 Q. And is whether or not you're successful in the  
20 litigation going to depend to some extent on how that  
21 expert testimony comes in?

22 A. Yes.

23 Q. Now, you talked about that you do believe you'll be  
24 successful on some claims or even a good portion of, of the  
25 claims. Even if you are successful on a good portion of

1 the claims, do you believe they'll -- the ultimate recovery  
2 from the estate will be better than what this settlement  
3 is?

4 A. I don't think so. I think that that's where everybody  
5 that's opposed to this is, I think they're under a --  
6 there's a husband and wife involved here. Michelle  
7 Schneider has an interest that, that existed prior to the  
8 time that Dr. Schneider's problems began. I have a hard  
9 time believing that the Court's going to totally ignore  
10 that and say that the estate can hit a home run and get  
11 everything that we've got here.

12 So I think that what we've negotiated here as far as a  
13 settlement is as much or more than what we could get -- is  
14 likely we could get at trial. That's not to say that we  
15 couldn't get more, but I think that this is, this is a good  
16 result that we have here today for AP 15.

17 Q. And would it be fair to say that there's, there's  
18 numerous conditions and factors that go in -- when you say,  
19 "yeah, we'll be successful on the merits of some of the  
20 claims," is there just a multitude of varying levels of  
21 success and how that greatly affects the overall recovery?

22 A. Yes. I can't even go through them all. There's so  
23 many factors involved here.

24 Q. And so the bottom line in probability of success on the  
25 merits, would it be fair to characterize it as: Yeah,

1 you'll succeed, you'll --

2 MR. JAMES: Objection, Your Honor. Again, these  
3 questions are leading and --

4 THE WITNESS: I think I've already testified  
5 to --

6 THE COURT: Just a moment.

7 MR. JAMES: -- you're, you're testifying rather  
8 than the trustee.

9 THE COURT: I'll sustain that.

10 MR. GARDNER: Okay.

11 THE COURT: You can rephrase your question.

12 MR. GARDNER: All right.

13 Q. (By Mr. Gardner) Are you at all confident that success  
14 on the merits of some of the claims will lead to a better  
15 net result?

16 A. No, I'm not.

17 Q. Okay. On AP 20 -- or -- AP 20, the non-discharge  
18 action, do you believe in your claims?

19 A. Yes.

20 Q. Do you believe the defense will fight hard?

21 A. Yes.

22 Q. Is it an important matter to Dr. Schneider?

23 A. Very important.

24 Q. Is there risk of loss in that AP 20 litigation?

25 A. There's always risk of loss in any litigation.

1 Q. The second factor is the difficulties, if any,  
2 encountered in the collection of any judgment that might be  
3 obtained.

4 As to AP 15, even if you are ultimately successful,  
5 what are some of the concerns you have about actually  
6 collecting on judgments at the end of the day?

7 A. Depletion of assets, hiding of assets, assets being  
8 depleted and, and disappearing over time, expenses involved  
9 in real property, maintaining -- paying property taxes,  
10 those kinds of things until they can get liquidating, all  
11 those kinds of things. We've talked about that earlier,  
12 and those are all concerns that I have.

13 Q. This -- breaking them down one at a time, this universe  
14 of assets that we have, the defendants, the various  
15 entities, they have some liquid assets. Do you believe any  
16 of those presently liquid assets will be available years  
17 down the road if you're successful in getting a judgment?

18 A. Not if it goes on for a couple of years. I mean, for  
19 example, the real estate trust money that's available, I  
20 think they can go at -- they can, they can get into that  
21 and they'll try to spend it.

22 We do have the money tied up from the sale of the  
23 property, so that's protected, but yeah, I have concerns  
24 about them liquidating property and taking it and spending  
25 the money. It's assets -- it's easy -- you know, it's not

1 easy to get a judgment, but just because you have a  
2 judgment doesn't mean you're going to be able to collect on  
3 that judgment.

4 Q. Well, and will all of the defendants during the course  
5 of this litigation have attorney's fees to pay?

6 A. Absolutely, and they're also going to have costs of  
7 litigation to pay for: Expert witnesses themselves, costs  
8 and expenses of travel, depositions, transcription, all of  
9 those things.

10 Q. And, now, as far as the real estate that's potentially  
11 available to satisfy judgments, do you have concerns about  
12 maintaining the value of that real estate or the expense of  
13 upkeep on that real estate and who's going to do it during  
14 the pendency of the litigation?

15 A. I do. The Whispering Winds Ranch is even a bigger  
16 concern than the Tommy Armour house. It's, it's out in  
17 the, you know, it's out in the rural area, it's got  
18 acreage, it has the big riding arena as well as a home.  
19 It's a log house that needs to be chinked and sealed, the  
20 rats kept out of it. You know, somebody has to go in and  
21 take care of those things until we can hopefully get it  
22 sold.

23 If you lease it out, there's concerns about tenants.  
24 There's, there's alfalfa pasturage, there's grazing land --  
25 or area, there's a trout pond that needs to be aerated

1 that's going to get taken over with weeds and algae.  
2 There's just a lot of practical expenses and problems that  
3 go along with the real estate, particularly the Whispering  
4 Winds Ranch.

5 There are some concerns about the Tommy Armour  
6 property. I've talked with the neighbors. They were  
7 concerned that the yard wasn't being maintained as well as  
8 it should be; although, Doc Schneider has done some work on  
9 that, but again, it didn't look -- it needed some work and  
10 tending. It's going to need mowing, watering, you know,  
11 weeding. All those kind of things have to be taken care of  
12 until it gets sold.

13 Q. And if, if these --

14 THE COURT: Well, but aren't those the things  
15 that you're going to be doing anyway if this settlement is  
16 approved?

17 THE WITNESS: I am, but then there's no question  
18 that I can get it done.

19 THE COURT: Who's --

20 THE WITNESS: You're right.

21 THE COURT: Who's paying insurance and taxes at  
22 this point in time on the real property?

23 THE WITNESS: Dr. Schneider has done that so far.

24 THE COURT: You have verification of that?

25 THE WITNESS: We did ask for that. I believe we



1 did get the insurance policy on both properties. You know,  
2 Judge, I haven't checked on that lately. I should  
3 double-check and make sure the policy is current, Your  
4 Honor.

5 THE COURT: Okay.

6 Q. (By Mr. Gardner) Moving forward, if the litigation  
7 goes on, is there uncertainty about who will do that in the  
8 future and who's responsible for it? Is that, is that a  
9 concern of yours?

10 A. Yeah, it is.

11 Q. Okay.

12 THE COURT: As far as transfers, would injunctive  
13 relief be a possibility even though that doesn't take care  
14 of the maintenance and taxes and insurance?

15 MR. GARDNER: We, we do have a claim for that in  
16 AP 15. And if it's not approved, if the settlement's not  
17 approved and something's not done, that is certainly a step  
18 we will take. Yes, it's a possibility.

19 Q. (By Mr. Gardner) I guess just to summarize, do you  
20 have concerns about, even in the likelihood of a  
21 substantial judgment, your ability to collect on such a  
22 judgment in the future?

23 A. I do. And I need to -- I want to be able to move  
24 forward as soon as possible one way or another regarding  
25 that.

1 Q. In AP 20, this factor, difficulties in collecting, is  
2 that an issue in the settlement of AP 20?

3 A. No. I'm not seeking any money, any property as part of  
4 that denial of discharge claim.

5 Q. So if you're successful in AP 20, there's no recovery  
6 for the estate.

7 A. Yes.

8 Q. The third factor is the complexity of the litigation  
9 involved in the expense, inconvenience, and delay  
10 necessarily attending it.

11 Was this a very important factor in your consideration  
12 of this settlement?

13 A. Yes and no. I mean, it is, it is going to be complex  
14 in the defense. In terms of my proceeding forward, there  
15 are basic claims that, frankly, I think I can prevail on  
16 based on allegations. I know there's a risk, but there are  
17 allegations that, that I believe I can prevail on that will  
18 result in Dr. Schneider losing his discharge.

19 Q. Okay. On AP 20 -- let's talk about AP 15. Are you  
20 concerned about --

21 A. Oh, I'm sorry, you're talking about AP 20?

22 Q. Well, we'll talk about both of them.

23 A. Okay.

24 Q. On AP 15, are you concerned about the complexity  
25 involved, the expense, the inconvenience, and the delay?

1 A. Yes, very, very concerned about AP 15. It's going to  
2 be very expensive, very complex, it's very time-consuming  
3 to proceed forward, and the recovery is uncertain.

4 Q. As far as a time frame and the delay we're talking  
5 about, give me an idea of when you think it would be  
6 possible that you would actually have finality to AP 15?

7 A. Factoring in appeals, two years.

8 Q. And until you were able to fully resolve AP 15 -- I  
9 want to note for the record I saw a smile on Judge  
10 Kirscher's face when you said "appeal in two -- within two  
11 years."

12 Do you have any confidence that that process could be  
13 completed in two years?

14 A. For AP 15?

15 Q. Yes, the jury trial and the appeals process and  
16 everything attendant to that.

17 A. No. I can hope.

18 Q. And until AP 15 is, is resolved, is there any  
19 distribution or funds to distribute to creditors?

20 A. No.

21 Q. Does the estate have funds in it right now?

22 A. Yes.

23 Q. What will happen to those funds as AP 15 goes on and  
24 experts are required and the expenses of the litigation?

25 A. They're going to be eaten up for administrative

1 expenses attendant -- you know, that go along with the  
2 litigation of AP 15.

3 Q. Okay. We've talked a lot about the complex issues and  
4 the various things attendant with AP 15. Do you have  
5 anything to add on that topic?

6 A. No, not really.

7 Q. Okay. Is there a possibility of multiple appeals; in  
8 other words, appeals at different points in the -- this  
9 process?

10 A. Yeah, I believe so. I think we've got the substantive  
11 consolidation. I think there could be appeals that go  
12 along with that and then the jury trial after that. We've  
13 dodged the bullet on one possible deal already. Hopefully,  
14 we'll dodge it on some others.

15 Q. Okay. And so we've talked about the expense to the  
16 estate. Is there also a concern about the expense and  
17 delay on the other side and the funds defendants need to  
18 pay their attorneys. Does that dispute diminish your  
19 potential recovery?

20 A. Right, and I've already testified about that. And, and  
21 that's going to be potentially another fight. I'm sure  
22 that the defendants are going to want to be able to use  
23 funds that maybe are held or technically owned by other  
24 entities before there's a final decision in this case so  
25 that they can defend the case.

1           For example, the money that you've got held in trust,  
2 we've agreed that it's going to be held in trust, but they  
3 may try to get access to that. As well they might try to  
4 get access to funds from Whispering Winds Ranch, which is  
5 not owned by Dr. Schneider, and they might want to get the  
6 exempt portion of the money from the Tommy Armour house in  
7 order to defend. That's a factor I put in -- I took into  
8 account in this case.

9       Q. There's also, under this third factor, the issue of  
10 Meridian. If, if the settlement's not approved, what's  
11 the -- what effect is the expense of the Meridian  
12 arbitration going to have on the estate?

13       A. Well, if it's not approved, I don't think I've got any  
14 choice but to get involved in the Meridian arbitration and  
15 look to getting ready to go to Minnesota to defend. I  
16 don't want that 3 million -- I don't consider the  
17 \$3 million claim to be valid that they filed in the case,  
18 and I'm going to need to defend it.

19       Q. And is the estate going to have to pay you hourly to do  
20 that?

21       A. Yes, plus costs.

22       Q. And so that will occur in the next couple of months?

23       A. Yeah. The -- well, it's going to start right up. I  
24 mean, I need to know right away so that I can get going on  
25 that. I mean, I can try to move -- I could try to continue

1 the trial on that, but I can tell you that the arbitrator  
2 is not going to be inclined to agree to that.

3 He -- this has been going on for over two years.  
4 There's been a lot of discovery and a lot of work done.  
5 And, I mean, I've been monitoring it, I get discovery,  
6 emails. All of those come through that I have reviewed,  
7 but I mean, this has been continued a number of times, and  
8 the arbitrator and the parties want this brought to a head  
9 and resolved. So I need to know where I'm at with that so  
10 I can get going on it.

11 Q. And those expenses attendant to the Meridian  
12 arbitration, is that going to eat into estate assets that  
13 would otherwise be available to continue pursuing AP 15?

14 A. Yes.

15 Q. Do you have any idea right now how much in funds the  
16 estate has?

17 A. It's around 80,000 - \$85,000 right now. We sold some  
18 personal items and got the \$75,000 from Kathleen Burrows's  
19 settlement, and that's about where we're at now. And that  
20 is being eaten up with bank fees and charges.

21 Q. Okay. And do you believe that's enough for the estate  
22 to pay you to defend the Meridian arbitration hourly and  
23 all your costs, and then also pay all the litigation costs,  
24 not attorney's fees but just litigation costs and expenses  
25 in AP 15?

1 A. No. It's going to run more than that, I'm sure. Plus  
2 I've got to pursue the discharge in AP 20, so there's going  
3 to be litigation, attorney's fees, costs -- attorney's fees  
4 and costs in that case as well, so I'm sure that the  
5 80,000 - 85,000 will be eaten up and gone.

6 Q. Now, all of these things that we've talked about, are  
7 these things you've considered in ultimately agreeing to  
8 this settlement and to bring these settlement proposals  
9 before the Court?

10 A. Yeah.

11 Q. And in your business judgment, do you believe this is a  
12 good outcome for the estate and the creditors?

13 A. I believe it is. I think it's reasonable.

14 Q. The fourth factor is: The paramount interest of  
15 creditors and a proper deference to their reasonable  
16 view -- views.

17 Do you feel like during this process, you gave  
18 deference to the views of the creditors?

19 A. I did. When I went into the arbitration -- or, excuse  
20 me, the mediation, that was, that was my concern. I  
21 thought that this would be enough for them to support it.  
22 They've objected now, so I've taken that into account. I  
23 hope they reconsider. I think this is a good amount for  
24 them, I think it's a reasonable amount, and I think it's, I  
25 think it's a good settlement.

1           So considering their interest, I know they have to make  
2           their own decision, but I think it's, I think it's a -- for  
3           them, I think this is a good result.

4           Q.   Given the potential waste in assets available for  
5           recovery and the spending by both sides on attorney's fees  
6           and expenses and all the other issues - increased  
7           attorney's fees and litigation costs and all of that - if  
8           you were -- carry both of these adversary proceedings  
9           through to their conclusion and through the appeals and all  
10          that process and were extremely successful in doing so, do  
11          you have any confidence that even in that scenario at the  
12          end of the day, you would recover more for the creditors  
13          than the settlement provides?

14                 MR. JAMES:   Objection.   Again, Your Honor, I  
15          apologize, but this is a very leading question and --

16                 THE COURT:   I'm going to sustain and allow him to  
17          rephrase it, because I'm sure he can.

18          Q.   (By Mr. Gardner)   What are your thoughts on what the  
19          recovery for, the net recovery for creditors would be if  
20          you were successful in carrying this litigation through the  
21          process versus what is recovered in this settlement?

22          A.   Well, I'm really worried about that and how much I  
23          could get.   All I can say is I've seen cases like Tim  
24          Blixseth where they have a multi, multimillion-dollar  
25          judgment against him in the Yellowstone Club case, and they



1 haven't been able to recover anything from him. He's  
2 sitting in jail, he won't say what happened to his assets,  
3 where they went. He's being punished, but the creditors  
4 aren't getting anything out of it. And that's a concern to  
5 me, and it happens.

6 And Dr. Schneider, I think, is a very strong-willed and  
7 stubborn individual, and I'm of concern that the same thing  
8 could happen here. I would hate to see that kind of a  
9 result for the people that have -- the creditors,  
10 particularly the personal injury creditors, that have been  
11 hurt by his actions here, the Monaco estate and the others  
12 that have been, that have been harmed.

13 I understand their concerns and why they don't feel  
14 that it's been enough. I think there are some practical  
15 realities that, that people need to consider in this, and  
16 that's what I'm, that's what I'm worried about in this  
17 case.

18 Q. And given your experience and your handling in this  
19 case and your experience with the debtor, what's your view  
20 on future recovery if Debtor is not granted his discharge?

21 A. Well, I don't think that they're going to be able to  
22 get money from his future earnings, per se. I think that  
23 from everything I've learned and seen and discussions I've  
24 had, he's not able to practice as a neurological surgeon  
25 any more, really, in the United -- at least certainly not

1 in Wyoming or Montana.

2 And what he's going now is providing some instructional  
3 services to out-of-the-country clients doing demonstrations  
4 on cadavers and being paid for that. So I don't think he's  
5 going to be earning the kind of money that he's earned in  
6 the past, so I think that their ability to recover from him  
7 is going to be limited, it's going to be difficult. And I  
8 think he's going to play the OJ Simpson and the Tim  
9 Blixseth game of hiding, of hiding assets and not really  
10 earning anything.

11 He does have a retirement account, but it's exempt. I  
12 don't think they're going to be able to get at that.

13 And so, so I don't think there's a lot that, that the  
14 creditors are going to be able to get even if his discharge  
15 is denied. I think they should consider that.

16 Q. And obviously, by the response you've received, the  
17 issue of settling a non-discharge action is controversial.  
18 Is it something that you considered or chose to do lightly?

19 A. No, not at all. As a trustee, honest debtors are  
20 really important, and they shouldn't be allowed to get a  
21 discharge unless they're honest. I understand that. That  
22 was, that was something that I struggled with in this case.

23 Given everything that has happened, excuse me, I would  
24 not have gone into this if I had -- and done this had I  
25 thought that the creditors would be so opposed to the

1 settlement, frankly, but -- because, you know, they're the  
2 ones that want to pursue him later and go after him and  
3 have the right to do that, and I understand that.

4 So it is an important policy consideration, and I did  
5 consider that in the terms of the mediation, but at the end  
6 of the day, I had a good-faith duty to present this  
7 settlement to the Court, to present it to the creditors for  
8 consideration, and that is what I have done.

9 And, and I do believe that overall, the benefits  
10 outweigh the negatives, and it should be approved.

11 MR. GARDNER: Thank you. I have nothing further.

12 THE COURT: You know, before you leave, I guess  
13 I'll ask, because it may not have any applicability but I  
14 want to ask the question in the event it does: You know,  
15 under Mickey Thompson, a Ninth Circuit case, is any of this  
16 -- does any of it constitute a sale of claims under 363  
17 that warrants or requires additional consideration as to  
18 the prospect of maximizing any of the claims that might be  
19 sold such as -- to maximize them under the auction process  
20 or anything else under the fair and equitable standard?

21 MR. GARDNER: There, there is a 363 sale of, I  
22 believe -- let me -- the only 363 sale is the 363 interest  
23 in Schneider, LP, and Schneider Management. Those are sold  
24 pursuant to 363(f) to Michelle Schneider, whatever  
25 interests the estate has in Schneider Limited Partnership.

1           Given its incorporation into an extremely  
2 complicated and multi-pronged settlement, I don't believe  
3 it requires an auction process for that.

4           THE COURT: Or other process to maximize that in  
5 case there are other persons/entities that want to  
6 auction it to, to pay a higher price?

7           MR. GARDNER: The -- it doesn't work because it's  
8 part of such a multi-pronged settlement.

9           THE COURT: Okay.

10          MR. GARDNER: And I believe there's numerous  
11 cases out there where the courts have approved, in a  
12 similar scenario, a portion of the settlement being done  
13 through a 363 sale. In fact, I think in In Re: Amen, when  
14 we had the contested settlement with the Lowe/Amen  
15 membership interest -- this portion of the motion and  
16 settlement agreement related to the 363 sale portion I  
17 believe is the same as what we did in the In Re: Amen case,  
18 which was contested.

19          THE COURT: Okay. I just want to make sure we  
20 cover it.

21          Mr. James.

22          MR. JAMES: Your Honor, if I might respond to the  
23 Court's question on that last point very briefly, I would  
24 argue that the bankruptcy estate's claim against Meridian  
25 would also fall into that category. And were -- the

1 settlement that will transfer that claim to Dr. Schneider,  
2 were that claim to be auctioned or something done to  
3 maximize its value, it might actually have resulted in some  
4 money for the estate versus simply giving it to  
5 Dr. Schneider here.

6 THE COURT: Okay. Well, I'll allow parties to  
7 develop that as testimony or, or through other evidence, if  
8 they wish.

9 Q. (By Mr. Gardner) Mr. Womack, do you have any comment  
10 on that?

11 A. Yes. I did consider that, Your Honor, with respect to  
12 the settlement and, and whether or not auctioning, for  
13 example, the Meridian claim would, would result in more  
14 money. I think Meridian would like to settle this and they  
15 might be interested in that, but in looking at the global  
16 settlement and the amount of money that we would get, my  
17 judgment is, is that trying to fragment this and do those  
18 sorts of would not result in a greater settlement for the  
19 estate than what we've got now, the \$2.5 million for the  
20 estate, gross.

21 THE COURT: And you're basing that on now your  
22 investigation and conclusion that the aggregate assets of  
23 the estate may be around 4 million?

24 THE WITNESS: Yes.

25 THE COURT: Okay. Even though the assets were

1 scheduled at higher value.

2 THE WITNESS: Significantly higher, far higher.  
3 But, for example, the --

4 THE COURT: But we're still dealing with apples  
5 to apples, the same assets, or have there been assets  
6 disappeared?

7 THE WITNESS: No, they're the same.

8 THE COURT: Okay.

9 THE WITNESS: They're basically the same assets.  
10 The things that really raised the value of the estate were  
11 the claims that Dr. Schneider scheduled that were actually  
12 held by Northern Rockies Neurological Spine and the claim  
13 against Meridian that he had personally, you know, for that  
14 lost income stream for 10 years. That one was huge. And  
15 to me, it's just worthless.

16 THE COURT: Okay, thank you. Who would like to  
17 go first in -- Mr. Cossitt.

18 MR. COSSITT: You know, with the Court's  
19 permission, we actually have a common interest --

20 THE COURT: You do.

21 MR. COSSITT: -- in getting the settlement  
22 agreement approved. And if that's a -- yes.

23 THE COURT: I think it's appropriate you would go  
24 next given that commonality.

25 MR. COSSITT: Thank you -- (inaudible.)

1 MR. JAMES: Your Honor - I apologize,  
2 Mr. Cossitt, if I might - just a procedural objection, Your  
3 Honor.

4 We are before the Court on the trustee's motion  
5 to approve these two adversary settlements. The trustee is  
6 the moving party. There are a number of creditors here who  
7 are objecting, who are obviously opposing that.  
8 Mr. Cossitt's client, Mr. Parker's clients are neither the  
9 movants nor are they objecting, so I would question their  
10 participation in this hearing -- (inaudible.)

11 THE COURT: But they are signers, but they are  
12 signers to the agreements, correct?

13 MR. JAMES: Correct. They have not joined in the  
14 motion. As I said, it is solely the trustee's motion that  
15 is before the Court and the objection of these creditors.

16 THE COURT: Well, I'm going to let Mr. Cossitt go  
17 next, and then Mr. Parker, and then all of the creditors,  
18 and the trustee will go after that. Okay?

19 And obviously, we're going to go into the  
20 afternoon, so --

21 MR. COSSITT: Your Honor, before I get started,  
22 I'm aware that the witness has been on the stand for an  
23 extended period of time. I guess should I just get moving?

24 THE COURT: Are you okay?

25 THE WITNESS: How long are you going to be,

1 Mr. Cossitt?

2 MR. COSSITT: We'll be right up until noon,  
3 Mr. Womack.

4 THE WITNESS: I'll be fine with that.

5 MR. COSSITT: Okay.

6 CROSS-EXAMINATION

7 BY MR. COSSITT:

8 Q. Mr. Womack, let's, let's focus on Adversary No. 15-15,  
9 okay --

10 A. Yes, sir.

11 Q. -- the collection case?

12 All right. What is your estimate, if you get an  
13 opinion from this court denying approval of the proposed  
14 settlement, what's your estimate of the amount of -- length  
15 of time from today until trial; discovery, pretrial  
16 motions, yada yada?

17 A. At least a year.

18 Q. Okay. And once you get to a trial, what's your  
19 estimated length of trial?

20 A. Oh, I think it could take more than a week, 10 days -  
21 2 weeks. It will be a long trial with all the expert  
22 witness and the financial documents and everything that  
23 needs to come in.

24 Q. It's fact-intensive.

25 A. It is fact-intensive.



1 Q. Do you have a -- and you've opined that one party or  
2 the other is likely to appeal some kind of a decision at  
3 the conclusion of the trial process?

4 A. Oh, yes, one or the other will.

5 Q. Okay. And on top -- and in considering those opinions,  
6 you're also considering this weird dance back and forth  
7 between the district court and the bankruptcy court, right?

8 A. Yes.

9 Q. The Stern vs. Marshall dance?

10 A. Yes.

11 Q. Have you formed an opinion with respect to the clarity  
12 and certainty with both this court and other courts are  
13 interpreting the Stern vs. Marshall doctrines?

14 A. I think that there's a lot of uncertainty regarding the  
15 Stern vs. Marshall doctrine. I think it is still being  
16 fully developed and ferreted out. There are issues that  
17 can be appealed with regards to any decisions that are made  
18 in that regard.

19 Q. You know, would it be --

20 THE COURT: You know, let's clarify, though:  
21 15-15's already at the district court.

22 MR. COSSITT: I guess, Your Honor, I'm eliciting  
23 testimony on the whole kit and caboodle --

24 THE COURT: Oh, okay.

25 MR. COSSITT: -- 15-15 and 15-20. And I guess I

1 would like to elicit a little testimony from the witness  
2 here about: Although that's the Court's view, how lawyers  
3 view it and argue back and forth, you know, in terms of  
4 the --

5 THE COURT: Well, there's no argument about where  
6 15-15 is.

7 MR. COSSITT: Okay.

8 THE COURT: We're in pretrial, and it's been  
9 already sent to withdrawal of reference. It's done by  
10 Judge Waters.

11 MR. COSSITT: Okay. Thanks, Judge.

12 THE COURT: I mean, AP 20 is a different matter,  
13 and that's clearly my jurisdiction.

14 MR. COSSITT: It is.

15 Q. (By Mr. Cossitt) But you've considered the Stern vs.  
16 Marshall dance - I call it the "Stern vs. Marshall dance" -  
17 uncertainty and complexity in the opinions that you've  
18 expressed here today?

19 A. Yes.

20 Q. Okay. How do you intend -- in Adversary 15-15, you're  
21 aware that there's an advice of counsel defense in there,  
22 correct?

23 A. There's -- I'm sorry?

24 Q. An advice -- that Dr. Schneider and the other  
25 defendants have pled advice of counsel as one of the

1 defenses?

2 A. Yes.

3 Q. You're aware that their position is, "Look, we've paid  
4 a bunch of lawyers in Wyoming for an asset protection plan  
5 and an estate plan," right?

6 A. Yes.

7 MR. JAMES: Objection, Your Honor. These  
8 questions are leading. This is not an adverse witness.  
9 They have a joined interest, as Mr. Cossitt has said. We  
10 would prefer that the trustee be allowed to testify.

11 THE COURT: Sustained.

12 Q. (By Mr. Cossitt) Do you -- have you formed -- you've  
13 read the answers, right?

14 A. Yes.

15 Q. You've looked at the affirmative defenses made in  
16 15-15?

17 A. Yes.

18 Q. Have, have the Schneider entities and clan asserted  
19 advice of counsel?

20 A. Yes.

21 Q. What's your plan to overcome that at trial?

22 A. I haven't, I haven't considered that yet. I haven't  
23 discussed that with Mr. Trent -- or Mr. Gardner in detail;  
24 "Mr. Trent."

25 Q. Do you consider it a problematic or troublesome

1 defense?

2 A. Not completely. I mean, it's, it's going to be an  
3 issue we're going to have to deal with, but I believe we  
4 can overcome it.

5 Q. Can you envision the defendants parading experts in  
6 front of the -- at the trial saying, "You know what? This  
7 is an acceptable thing to do for physicians?"

8 A. Yeah, I'm sure that they're going to do that.

9 Q. Do you know approximately when the asset protection or  
10 estate plan was set up?

11 A. I believe so, yes.

12 Q. When?

13 A. The, the first time that I saw any kind of an estate  
14 planning or asset protection planning work being done was  
15 in about 2007. There might have been some before then, but  
16 it wasn't significant. The majority of the asset  
17 protection and estate planning was done beginning in 2011  
18 and 2012.

19 Q. The plan documents were set up back in 2007, weren't  
20 they?

21 A. No. The only thing that was set up in 2007 was the  
22 Schneider Limited Partnership. There was a trust -- or  
23 another entity set up at BC -- let's see, Brandon, Caitlin,  
24 something trust, but it never really had much.

25 The real, the real estate planning and asset protection

1 documents started being discussed and formed in 2011 and  
2 then in 2012. The irrevocable trusts for the children were  
3 set up in 2012. The MedPort had been set up sooner but  
4 didn't have anything in it and it wasn't utilized as part  
5 of this whole thing until after 2011.

6 Q. Could you give us your assessment of the probability of  
7 success on the merits in Adversary 15-15?

8 A. You're asking me to give a percentage?

9 Q. I am, within 10 percent.

10 A. Well, I believe we'd have -- that we will be successful  
11 to some degree. I would put that at better than 80  
12 percent. But as to how much we would be able to recover,  
13 it's 50/50. I couldn't tell you. I couldn't say that  
14 we're going to -- I could not say that we're going to get  
15 more than we're getting here today with any assurance.

16 Q. So you believe the success of merits on some components  
17 of the litigation would be in the neighborhood of  
18 80 percent; is that correct?

19 A. At least on, on some component of it, yeah.

20 Q. All right. And others are lower.

21 A. Yes.

22 Q. Okay. Overall, can you give me an opinion as to your  
23 assessment of the, the overall success or -- the overall  
24 chances of success on the merits? Can you reduce that to a  
25 number for me?

1 A. Well, I'm not -- I mean, there's different parts.  
2 There's liability, setting aside the different entities,  
3 you know, getting access and recovering assets. I'm not  
4 sure exactly what you're asking.

5 Q. I'll withdraw the question, then.

6 A. Okay.

7 Q. With respect to deference to the creditors' views,  
8 you're aware there's a number of contingent claims in this  
9 case, right?

10 A. Yes.

11 Q. And you've filed objections to them, right?

12 A. Yeah.

13 Q. Now, there -- what is a contingent claim?

14 A. It means that it hasn't been decided that it has --  
15 that it's allowed, that it's subject to defenses. It  
16 hasn't been litigated, gone to judgment. It's not -- it's  
17 also objected to by the creditor -- or the debtor, rather.  
18 He doesn't believe that he's liable on the claim. So it  
19 still has to be litigated -- (inaudible.)

20 Q. So a contingent claim is one in which liability has not  
21 been determined?

22 A. Yeah.

23 Q. Okay.

24 A. Yes.

25 Q. And, then, do you know what an unliquidated claim is?

1 A. Yes.

2 Q. What's an unliquidated claim?

3 A. The amount of the claim has not been determined in some  
4 fashion.

5 Q. Okay. Now, you looked at Attorney Patten's objection  
6 to this settlement, right?

7 A. Yes.

8 Q. Is, is each and every claim that he asserts objections  
9 on behalf contingent and unliquidated?

10 A. Yes.

11 Q. And you spoke -- did I understand your earlier  
12 testimony to be that you spoke with Attorney Patten before  
13 you showed up at the mediation?

14 A. Yes.

15 Q. At the time you showed up at the mediation, did you  
16 have an agreement with him that his clients were going to  
17 buy into this?

18 A. No.

19 Q. In the context of showing up and negotiating the  
20 settlement, you were clearly aware of the four-factor test  
21 at the time we were at that mediation, right?

22 A. Yes.

23 Q. So what deference does a Chapter 7 panel trustee give  
24 to \$7 million worth of claims which are disputed as to  
25 liability or contingent and unliquidated?

1           How do you stir that into the mix of your duty to  
2 negotiate a settlement consistent with the fourth factor in  
3 the four-factor test?

4       A. Well, I understand your question and your concern.  
5 They are contingent, unliquidated, disputed, but they  
6 assert claims that on the -- first of all, if a claim is  
7 asserted on its face, it's given some credence.

8           And based on my investigation, preliminary  
9 investigations of those claims and what occurred,  
10 particularly with respect to the Monaco claim, it appeared  
11 to me that they had, they had valid -- they had claims that  
12 could be legitimately, in good faith, brought and had some  
13 reasonable chance of success. So, so that is how I looked  
14 at that in determining this.

15          I mean, you're asking me to, to kind of look into the  
16 future and predict, but as a trustee, I have to do that  
17 sometimes, and --

18       Q. I guess what I'm asking is: You show up at a -- a  
19 Chapter 7 trustee shows up at a mediation to hammer out a  
20 settlement deal, and you've got a bushel basket full of  
21 claims, say 20 of them. Ten of them are garden variety,  
22 uncontested contract claims, the other ten are contingent  
23 and unliquidated.

24          As a trustee, do you give greater weight to the views  
25 of the contract claim holders for which there's no



1 reasonable basis for dispute, and do you give less weight  
2 to people whose claims are subject to serious dispute?

3 A. I would give greater weight to the contract claims, but  
4 I also still have to consider the other claims.

5 Q. And did you try to do the best job possible in weighing  
6 these competing considerations at the settlement -- or at  
7 the mediation meeting?

8 A. I did.

9 Q. At the conclusion of the settlement meeting, the  
10 mediation, were you under the belief that the personal  
11 injury claimants would be on board with this settlement?

12 A. I thought they would. I thought that the amount was  
13 sufficient to -- and given all the other factors, that they  
14 would be on board with it.

15 Q. Let's turn our attention to Adversary No. 15-20.

16 A. Yes.

17 Q. (Inaudible) -- discharge case.

18 A. Yes.

19 Q. Could you give me your best estimate of the amount of  
20 time it would take from today to trial? That would be  
21 discovery, dispositive motions, that kind of pretrial  
22 skirmishing.

23 A. That's going to be difficult. We have a trial date  
24 currently. And if the Court holds us to that trial date,  
25 then that's when it's going to be, so we'll deal with it

1 that way.

2 If, if the Court is -- will allow the trial date to be  
3 continued in light of everything that took place, we're  
4 going to need several months to engage in discovery and  
5 then get ready for trial.

6 So under the first scenario, trial is in May. Under  
7 the second scenario, the trial wouldn't probably be until  
8 September, would be my estimate.

9 Q. And do you have an estimate for the amount of time it  
10 would take to try Adversary 15-20?

11 A. Yeah, I think I can -- I think it can get done in two  
12 days at the most. It depends, in part, on what I decide to  
13 pursue in terms of facts in order to deny discharge.

14 Q. And you, you -- I think you testified earlier you  
15 expected if the debtor loses, he'll probably take that up  
16 on appeal.

17 A. I'm sure.

18 Q. Okay. What do you have for a cost estimate with your  
19 seven months of -- excuse me. Seven months of pretrial  
20 skirmishing, two days of trial, what's your cost estimate  
21 for that litigation package?

22 MR. JAMES: Objection. I believe the question  
23 misstates the witness's testimony about the length of  
24 pretrial preparation.

25 THE WITNESS: You know, I'm --

1 THE COURT: I'll sustain as to that. I'll let  
2 you answer the question, if you can.

3 THE WITNESS: You know, I -- it's really hard. I  
4 haven't put a pencil to it. I'm sure it will be -- you  
5 know, it could be \$10,000 to get it done. Certainly  
6 including my attorney's fees/costs, it could be more,  
7 15,000 - 20,000. It's hard. I haven't sat down and just  
8 tried to analyze that carefully. It depends, in part, on  
9 what Defendants do and the kind of discovery they want to  
10 engage in. There's a lot of factors involved in that.

11 Q. (By Mr. Cossitt) Who has the burden of proof on those  
12 claims?

13 A. It's on me. I have the burden of proof.

14 Q. Do you have an estimate of your chances of success on  
15 the merits?

16 A. Yes.

17 Q. What is it?

18 A. I think it's over 90 percent, but I've been wrong  
19 before.

20 Q. There, there won't be any judgment collection by the  
21 bankruptcy estate if it prevails on that, will there?

22 A. No.

23 Q. What's the practical reality of that litigation's  
24 complexity? Is it complicated litigation?

25 A. Again, it depends on what claims I go forward on. As

1 the complaint currently stands, it's complicated and it  
2 will take a lot of time to engage in discovery and to try  
3 it, certainly longer than two days to complete it.

4 Q. Will it be inconvenient for the bankruptcy estate to  
5 have to deal with this adversary proceeding?

6 A. Inconvenient?

7 Q. Yeah. That's one of the factors in the four-factor  
8 test, sir.

9 A. Well, I mean, it's part of my job. I wouldn't really  
10 consider it inconvenient.

11 Q. Will it result in delay of the other tasks that are at  
12 hand to administer this estate?

13 A. I think I can deal with all of it.

14 Q. Okay. Let's assume that the discharge denial is  
15 prosecuted successfully. What does that mean?

16 A. That means that Dr. Schneider will not get a discharge  
17 of certain claims that are asserted in the case.

18 Q. So he does not receive a bankruptcy discharge.

19 A. Right.

20 Q. And do you know what the legal effect of that is?

21 A. Well, I think so.

22 Q. What does it allow the -- let's focus on the personal  
23 injury creditors. So assuming that he doesn't get a  
24 discharge, what do the personal injury creditors do after  
25 that?

1 A. Well, they still have to liquidate their claim.

2 Q. And they do that one by one, don't they?

3 A. Right. And they'll have --

4 Q. And where do they do that?

5 A. They'll have to do that in the court where they, they  
6 would have had to bring the claim originally.

7 Q. Outside of the bankruptcy court system.

8 A. Right, state. I think it's -- I think all those claims  
9 are in state district court down in Wyoming, if I'm not  
10 mistaken, or one maybe in -- (inaudible.)

11 Q. So if the discharge gets denied, we have individual  
12 creditors going back to whatever forum they were in before  
13 this bankruptcy proceeding was started, right?

14 A. Yeah, yeah.

15 Q. And they, they individually prosecute their claims and  
16 consume judicial resources and other resources to prosecute  
17 their claims one by one in whatever forum they happen to be  
18 in.

19 A. That's, that's one -- yeah, that's a very likely  
20 scenario.

21 Q. And then outside of bankruptcy, it's generally a race  
22 to the assets, isn't it?

23 A. Yes; although, the automatic stay would preclude them  
24 from going after any assets of the bankruptcy estate.

25 Q. Well, but I'm not talking about the bankruptcy estate's

1 assets. I'm referring to prosecuting claims against a  
2 defendant and then chasing the assets. There's no  
3 automatic -- assets of the defendant, not the estate.

4 A. Correct.

5 Q. Okay. So instead of one set of transaction costs here  
6 in bankruptcy court, these folks would be getting into  
7 multiple sets of transaction courts -- or transaction costs  
8 in other forums other than the bankruptcy court forum.

9 A. Yes.

10 Q. What does, what does a lis pendens under Montana law  
11 do?

12 A. Gives notice that the estate -- or that there's an  
13 action concerning property, real property, and gives notice  
14 of your claim against that property.

15 Q. But it's not an injunction, is it?

16 A. No.

17 Q. Nor is it any sort of a prejudgment remedy.

18 A. Not per se. I think it ties up property as a practical  
19 matter because it's difficult to sell, given title issues  
20 that go along with that.

21 Q. But all it does is, is cloud the title, right?

22 A. It does.

23 Q. It doesn't entitle anybody to tie up assets or income  
24 or sale price - (inaudible) - does it?

25 A. The lis pendens itself? No.

1 Q. One would have to go get an injunction or attachment or  
2 other prejudgment remedy.

3 A. Yes.

4 MR. JAMES: Objection, Your Honor, to this line  
5 of questioning as to both leading and relevance.

6 THE COURT: I'm going to overrule that.

7 MR. COSSITT: May I approach the witness, Your  
8 Honor?

9 THE COURT: You may.

10 MR. COSSITT: The record should reflect that I'm  
11 going to give the witness a copy of a document that's filed  
12 at Docket No. 212-1 and ask him to identify it.

13 THE WITNESS: Yes, I -- it's a letter I sent to  
14 Dr. Schneider regarding some documents, boxes of documents  
15 that he had dropped off at my office and that I was asking  
16 him to pick up and take care of.

17 Q. (By Mr. Cossitt) Okay. In that letter, did you demand  
18 payment from him?

19 A. I did.

20 Q. How much did you demand from him?

21 A. I do not recall. I'd have to look at the letter again.

22 Q. Did you have a legal or contractual basis to demand  
23 payment from him?

24 A. Yes.

25 Q. What was it?

1 UNIDENTIFIED SPEAKER: Your Honor, I object.

2 THE COURT: Yeah, I'm wondering where we're  
3 going.

4 MR. COSSITT: We're going -- one of the four  
5 factors in the four-factor test is the complexity of the  
6 litigation. And going forward, I guess if this doesn't  
7 settle, this litigation and the administration of this case  
8 may get more complicated with the debtor having some other  
9 things under consideration with respect to the way he's  
10 been treated by this trustee.

11 And we'd like a little bit of latitude to put  
12 some evidence into the record to give the Court the flavor  
13 of things that are under consideration on the debtor's side  
14 in terms of matters that go to the heart of the  
15 administration of this case and complexity that might get  
16 injected into it.

17 THE COURT: Well, I'm -- Mr. Patten.

18 MR. PATTEN: The witness has --

19 THE COURT: You need to be closer to a mic.

20 MR. PATTEN: If the witness hasn't testified that  
21 he's taking these things into account, I don't see what the  
22 relevance is. So there's a foundation issue that it's  
23 something that the witness took into account and considered  
24 in proposing the settlement.

25 THE COURT: Yeah, I guess that's what I'm



1 struggling with, is how this links to administration in the  
2 regulation to the compromise/settlement - I see them  
3 separate and distinct - and that you could raise those in  
4 any event regardless of the settlement.

5 MR. COSSITT: Well, again, Your Honor, our view  
6 is that under the four-factor test, the Court's  
7 consideration includes the delay and inconvenience of  
8 the -- or of the litigation - (inaudible) - estate, so  
9 that's our response. We would like a little latitude to  
10 continue with it. And alternatively, I'll elicit some of  
11 the same testimony when I put my client on the stand, or  
12 attempt to.

13 THE COURT: I'm going to sustain the objection.

14 MR. COSSITT: Okay, thank you. I'll just review  
15 my notes, and I may well conclude here in a minute.

16 THE COURT: Okay, thank you.

17 MR. COSSITT: That does conclude my examination.

18 THE COURT: Okay.

19 MR. COSSITT: Thank you.

20 THE COURT: Thanks.

21 THE WITNESS: We could go on, from my  
22 perspective, Your Honor.

23 THE COURT: Well, let me just see where  
24 Mr. Parker is. Do you have questions, Mr. Parker?

25 MR. PARKER: I can be done by noon.

1 THE COURT: Okay.

2 MR. PARKER: I can be done by noon.

3 THE COURT: All right, I'll let you go. I'll let  
4 you go, and then we will then take a break for lunch, and  
5 then we will start with the opposition.

6 CROSS-EXAMINATION

7 BY MR. PARKER:

8 Q. Mr. Womack, I'm sure you have read the objections posed  
9 by Mr. Patten's clients.

10 A. Yes; yes, I have.

11 Q. And you've read the substance of the objection and the  
12 nature of what he believes his claims are worth and the  
13 objections of the, of his clients, correct?

14 A. Yes.

15 Q. Did you see anything new in any of those filings that  
16 you didn't consider when you entered into this settlement  
17 agreement?

18 A. No.

19 MR. PARKER: That's all I have, Your Honor.

20 THE COURT: Okay, thank you. It is, what,  
21 5-to-12. Let's break for lunch. We'll reconvene at 1:30  
22 here.

23 So, Mr. Womack, you may step down.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: You can leave your exhibits if you

1 want, or you can take them with you, whatever you prefer.

2 So with that, Court is in recess.

3 (The lunch recess was taken.)

4 THE COURT: Good afternoon. Please be seated.

5 Mr. York.

6 MR. YORK: Good afternoon, Your Honor. Aaron  
7 York for the Office of the United States Trustee.

8 THE COURT: Okay.

9 MR. YORK: We do have one witness that we wanted  
10 to put on in our case in chief. It's Mr. Michael Kakuk  
11 from the Commissioner of Securities and Insurance in  
12 Montana.

13 It's a pretty short presentation on my end. I  
14 think Mr. Cossitt has a couple minutes of  
15 cross-examination. But because Mr. Kakuk lives in Helena  
16 and he's sitting out there with a relatively short amount  
17 of testimony, I polled the other lawyers in, in the  
18 courtroom, and they were gracious enough to indicate that I  
19 could put him on now if, if Your Honor was in agreement  
20 with that.

21 THE COURT: No problem. Call him, sure.  
22 Let's -- we'll do that.

23 MR. YORK: Let me get him.

24 THE COURT: While he's getting the witness, I'll  
25 just note that this is a continuation of the trustee's

1 motion to approve compromises and settlements in 14-61357,  
2 In Re: Schneider.

3 If the witness would come to the podium to be  
4 sworn by the clerk, who will appear on the video, please.

5 MICHAEL KAKUK, WITNESS, SWORN

6 THE COURT: Mr. York, is there, is there a  
7 monitor on in that podium?

8 MR. YORK: A monitor on in the podium?

9 THE COURT: Yeah. No?

10 MR. YORK: (No audible response.)

11 THE COURT: There isn't, okay.

12 MR. YORK: Yeah, I don't see one.

13 THE COURT: Yeah, I thought they were going to --  
14 okay.

15 MR. YORK: Your Honor, can I approach the witness  
16 with a binder of exhibits?

17 THE COURT: Certainly.

18 MR. YORK: And I believe -- does Your Honor have  
19 the Meridian witness binder as well?

20 THE COURT: I do.

21 MR. YORK: Thank you.

22 THE COURT: You know, I was misleading to  
23 Mr. James or whoever it was that was up when I had  
24 mentioned about the camera. Actually, I think the camera  
25 is right around the corner there. You might see it up on

1 the wall toward the window.

2 MR. YORK: Right.

3 THE COURT: This one, I think, is on the witness  
4 or on the bench. So just to clarify, if you were looking  
5 to -- want to get a frontal shot on the camera, you can.

6 DIRECT EXAMINATION

7 BY MR. YORK:

8 Q. Mr. Kakuk?

9 A. Yes.

10 Q. What is your position?

11 A. I'm an attorney with the CSI, which is the Commissioner  
12 of Securities and Insurance Office of the Montana State  
13 Auditor.

14 Q. And how long have you held that position?

15 A. For roughly two years now - almost three.

16 Q. And in general, could you describe for the Court what  
17 your office does?

18 A. Sure. Well, it's officially called the "Montana State  
19 Auditor's Office," but we've christened it also the  
20 "Commissioner of Securities and Insurance" because those  
21 are the areas of the law that we regulate, insurance  
22 companies and securities.

23 THE COURT: You know, I may have missed it or was  
24 thinking of something else. Did you ask for his name?

25 Q. (By Mr. York) Could you please state your name for the

1 record?

2 A. Of course. Michael Allen Kakuk, K-A-K-U-K.

3 Q. Thank you.

4 THE COURT: Thank you.

5 MR. YORK: Thank you, Your Honor.

6 Q. (By Mr. York) And, Mr. Kakuk, has your office had  
7 prior involvement with Dr. John Schneider?

8 A. Yes, we have.

9 Q. And how did your office first come to have involvement  
10 with Dr. Schneider?

11 A. Dr. Schneider -- sorry, "Schneider"?

12 Q. Schneider [pronouncing].

13 A. Schneider. Dr. Schneider started a captive insurance  
14 company that was regulated by our office back in 2008.

15 Q. And what was the name of that captive insurance  
16 company?

17 A. Northern Rockies Insurance Company.

18 Q. And as -- did you, did your office issue a certificate  
19 for that entity to operate in Montana?

20 A. Yes, we did.

21 Q. And what do pure captive insurance companies do?

22 A. Well, a pure captive, you can think of it kind of like  
23 a private holding company for one person. They insure  
24 risks of a parent company. In this case, Dr. Schneider  
25 used the company to insure the risks of his medical

1 malpractice -- or, sorry, the medical malpractice insurance  
2 for his medical practice.

3 Q. And do you, do you know what Dr. Schneider's  
4 relationship was with Northern Rockies Insurance Company?

5 A. He was the, technically the owner of the, of the  
6 captive.

7 Q. Now, I understand that your office issued an order of  
8 suspension against NRIC in February of 2013.

9 A. That's correct.

10 Q. Why did the CSI issue an order of suspension against  
11 NRIC?

12 A. There were a couple of reasons. We had multiple  
13 concerns with the operations of NRIC.

14 First of all, we had received notice from his captive  
15 manager, Ace Harris [phonetic], that, that they were fired,  
16 essentially, and were no longer a captive manager. And a  
17 captive manager is required for a captive, so that started  
18 our involvement.

19 And then we learned about that there was essentially  
20 one claim that was paid by Dr. Schneider, a claim for  
21 essentially a defamation case, and that depleted all the of  
22 the funds in the company. We had concerns about how and  
23 why that claim was paid and also, then, that the company  
24 had no -- had insufficient funds to continue.

25 Q. So the defamation claim was paid with the, with

1 funds -- the defamation claim depleted funds available for  
2 other claimants?

3 A. Correct, yes.

4 Q. How did Dr. Schneider respond to the order of  
5 suspension by your office?

6 A. Through his counsel, there were communications between  
7 his attorneys and our office. They attempted to resolve  
8 our concerns through those communications, which included  
9 an affidavit that was signed by Dr. Schneider and notarized  
10 and submitted to our office.

11 Q. Can I ask you to turn to Exhibit 12 in the Meridian  
12 binder that I just gave to you?

13 A. I have it.

14 Q. Do you recognize Exhibit 12?

15 A. Yes. This is a copy of the affidavit that was  
16 submitted to our office.

17 Q. By Dr. Schneider?

18 A. Correct, by Dr. Schneider through a letter from his  
19 attorney.

20 MR. YORK: Your Honor, I'd move for the admission  
21 of Meridian Exhibit 12.

22 THE COURT: Any objection?

23 (No audible response.)

24 THE COURT: Exhibit 12 is admitted.

25 MR. COSSITT: I'm sorry, I object. Where on the



1 docket is it located?

2 MR. YORK: It's Exhibit 12 to Meridian's  
3 exhibits.

4 MR. GARDNER: Two eighty-five, Judge.

5 THE COURT: Two eighty-five, yeah.

6 MR. COSSITT: Eighteen? No objection.

7 THE COURT: Admitted.

8 MR. YORK: Mr. Kakuk, would you please turn to  
9 page 4 of Exhibit 12?

10 THE WITNESS: Yes.

11 Q. (By Mr. York) Would you go ahead and read that  
12 paragraph, Roman Numeral V, please?

13 A. Yes: It is my desire and intention to close NRIC as a  
14 functioning entity and resolve the Wyoming-related  
15 litigation to the best of my ability using my own  
16 resources. I do not know if any further Wyoming claims  
17 will be made other than those listed above.

18 Q. And that was an affidavit that Dr. Schneider submitted  
19 to your office.

20 A. Correct.

21 MR. YORK: No further -- I'll pass the witness.

22 THE COURT: Okay. Anyone have questions?

23 MR. SOUEIDI: Your Honor, Joe Soueidi with  
24 Meridian.

25 CROSS-EXAMINATION

1 BY MR. SOUEIDI:

2 Q. Mr. Kakuk, would you just briefly summarize what the  
3 affidavit said, just very briefly, that Mr. Schneider  
4 signed?

5 A. The entire affidavit?

6 Q. Just briefly, the general idea of it.

7 A. Sure. We had asked for a description of what his  
8 current business was, what claims were pending against the  
9 company, whether there were any additional funds, what his  
10 intentions were to do with the company, and how the pending  
11 claims would be resolved. Those were our concerns, and he  
12 attempted to address those in the affidavit.

13 Q. In your opinion, do you think the proposed settlement  
14 between Dr. Schneider and the trustee, which allows for  
15 discharge of Dr. Schneider's debts, is fair and equitable?

16 MR. GARDNER: Your Honor, I object. (Inaudible)  
17 -- not a party to the bankruptcy - (inaudible) - not an  
18 expert witness -- (inaudible.)

19 THE CLERK: Excuse me, we're not picking you up  
20 on the record.

21 MR. GARDNER: I apologize.

22 THE COURT: Is your mic on?

23 UNIDENTIFIED SPEAKER: Mic's off.

24 MR. GARDNER: No. Is that better?

25 THE CLERK: Much better. Thank you.

1 MR. GARDNER: I object on relevance. He's not a  
2 party and his opinion is not relevant to this.

3 MR. COSSITT: We object also in that neither the  
4 U.S. Trustee nor the department are creditors in this case.

5 Although the U.S. Trustee's a party in interest,  
6 the opinions that are being elicited are not from anybody  
7 who's a creditor, so they lack standing to object to  
8 discharge.

9 Further object to lack of foundation. We've got  
10 a witness on the witness stand who is a lawyer for a state  
11 agency, and there's been no foundation laid that this is  
12 the opinion of the agency or that there was any internal  
13 deliberations which resulted in a final agency opinion on  
14 this. We have an opinion of an individual lawyer from a  
15 state agency that purports to speak for the entire agency.

16 On those bases, we object and request the Court  
17 sustain it.

18 THE COURT: I'll sustain both objections.

19 Q. (By Mr. Soueidi) Is -- excuse me. Was Dr. Schneider's  
20 affidavit submitted to your office?

21 A. Yes, it was.

22 Q. And it's holding your formal records there?

23 A. Correct.

24 MR. SOUEIDI: Okay. No further questions, Your  
25 Honor.

1 THE COURT: Mr. Patten.

2 MR. PATTEN: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. PATTEN:

5 Q. Mr. Kakuk, would you look at page 3 of the exhibit?

6 A. Yes.

7 Q. Thomas vs. Schneider was one of the claims that was  
8 pending at the time?

9 A. Yes.

10 Q. And Monaco Estate vs. Schneider was one of the claims  
11 pending at the time?

12 A. Correct.

13 Q. Do you have any knowledge of whether Dr. Schneider used  
14 the best of his ability and resources to resolve the claims  
15 of either Thomas or Schneider -- or, excuse me, of Monaco?

16 A. It's my understanding that those claims have not been  
17 resolved.

18 MR. PATTEN: Okay, thank you.

19 THE COURT: Mr. Cossitt.

20 CROSS-EXAMINATION

21 BY MR. COSSITT:

22 Q. Mr. -- is it "Kakuk"?

23 A. Kakuk [pronouncing].

24 Q. Kakuk, excuse me.

25 A. No worries.

1 Q. That final paragraph that you read into the record  
2 talks about his, Dr. Schneider's desire and intention,  
3 right?

4 A. Correct.

5 Q. And it talks about the best of his ability, right?

6 A. Correct.

7 Q. Okay. The affidavit doesn't set any standards by which  
8 to measure best efforts or best abilities, does it?

9 A. I don't believe so, no.

10 Q. So what standards or criteria did the department use in  
11 formulating the opinions that you've expressed here today?

12 A. I'm sorry, could you repeat the question?

13 Q. The opinion that you've expressed today, I believe, was  
14 that it's your view or the department's view that  
15 Dr. Schneider has not used the best of his ability to try  
16 to resolve these claims. Did I misunderstand your  
17 testimony?

18 A. No. I don't believe I testified to that today, but  
19 that is my opinion.

20 Q. Okay. And you agree, though, that the affidavit that  
21 was submitted to the department contains no standards,  
22 right?

23 A. Correct.

24 Q. Does that imply that any performance of that "best of  
25 my ability" stuff is left to the discretion and standards

1 by Dr. Schneider?

2 A. No. I think it would be the, to the discretion of the  
3 Court here sitting in equity.

4 Q. How is it that a statement in an affidavit rises to the  
5 level of some sort of an enforceable promise, sir?

6 A. I'm not sure that it does.

7 Q. You've been a lawyer for how many years, sir?

8 A. Eight and a half.

9 Q. And you've been with this department for how long?

10 A. Two and a half.

11 Q. You know how to draft settlement agreements that create  
12 binding, enforceable promises, don't you?

13 A. I would hope so.

14 Q. And this affidavit is not one, is it?

15 A. This is not a settlement, no.

16 Q. Okay. It's not even a contract, is it?

17 A. No.

18 MR. COSSITT: Okay, thank you very much. That  
19 concludes the examination, Your Honor.

20 THE COURT: Okay. Mr. York.

21 REDIRECT EXAMINATION

22 BY MR. YORK:

23 Q. Mr. Kakuk, the affidavit is not a settlement, correct?

24 A. Correct, it is not.

25 Q. And it's not a contract?

1 A. No, it's not.

2 Q. But it is a sworn statement.

3 A. Yes, it is.

4 MR. YORK: Thank you.

5 THE COURT: You may step down.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: And I believe you're free to go and  
8 may be excused from court.

9 Correct?

10 MR. YORK: Yes, Your Honor.

11 UNIDENTIFIED SPEAKER: Yes, Your Honor.

12 THE COURT: Thank you. You may. Safe travels  
13 back to Helena.

14 THE WITNESS: Thank you.

15 THE COURT: Who wishes to proceed next?

16 Mr. Patten?

17 Did he call you?

18 THE WITNESS: What's that?

19 THE COURT: Did he call you?

20 THE WITNESS: He didn't, but I assumed you wanted  
21 to go with me next.

22 THE COURT: Who were you calling as a witness?

23 MR. PATTEN: Well, I was going to finish -- or  
24 start my cross of Mr. Womack.

25 THE COURT: Okay, very good.

1 MR. PATTEN: Sorry.

2 THE COURT: Okay. Mr. Womack, I'll remind you  
3 you're still under oath.

4 THE WITNESS: Yes, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. PATTEN:

7 Q. Good afternoon, Mr. Womack.

8 A. Good afternoon, Mr. Patten.

9 Q. Can I call you "Joe"?

10 A. Yes.

11 Q. Thank you. Joe, on page 6 of your motion to approve  
12 the settlement, when addressing the probability of  
13 success --

14 A. Yes.

15 Q. -- you state that you're confident and you will prevail  
16 in your complaint to deny discharge.

17 A. Yes.

18 Q. And then in your -- through your amended complaint, you  
19 set out a series of allegations that form the basis of your  
20 complaint to deny discharge.

21 A. Yes.

22 Q. One of those is that the debtor has engaged in a scheme  
23 to hinder, delay, or defraud creditors and the trustee by  
24 removing or concealing property.

25 A. That's correct.



1 Q. What facts do you believe you can establish to prove  
2 this allegation?

3 A. Well, the most glaring example was the creation of an  
4 account in Billings that had money deposited into it at  
5 Dr. Schneider's direction but held in the name of his  
6 sister, Kathleen Burrows.

7 That, that money was, in my view, clearly attributable  
8 to Dr. Schneider from a period of 2012 through 2000 --  
9 through the time that the bankruptcy was filed and was not  
10 disclosed to me as part of the debtor's schedules or  
11 statement of financial affairs. And after the bankruptcy  
12 was filed at Dr. Schneider's direction, his sister  
13 transferred that property to his wife, Michelle.

14 Q. What was the source of the money in this account?

15 A. Well, there were multiple sources. There was a piece  
16 of real property out on the Molt road near Billings that --  
17 there were a series of transfers, but ultimately it was put  
18 into Dr. Schneider's name and then to Kathleen Burrows who  
19 then sold it, on behalf of Dr. Schneider, at his direction  
20 according to Kathleen Burrows. She deposited 146,000 of  
21 that into the U.S. Bank account in Billings and retained  
22 about 150 of that for herself.

23 In addition to that, Dr. Schneider deposited some  
24 checks payable to Rocky Mountain newer spine and to himself  
25 into the account. The total deposits in the account were

1 about \$546,000, I believe.

2 Q. And were these deposits made prior to the filing of the  
3 bankruptcy?

4 A. Yes.

5 Q. Was the -- and on what basis do you believe that the  
6 debtor had access to the funds in the account?

7 A. Well, Kathleen Burrows testified under oath that the  
8 money was not hers even though the account was held solely  
9 in her name, that she was directed to --

10 MR. COSSITT: I'm going to object. This is  
11 hearsay. This witness is testifying about what another  
12 human being testified to in another proceeding. It's  
13 backdoor hearsay, Your Honor, and we object.

14 MR. PATTEN: Your Honor, the question that I  
15 asked Mr. Womack was what he believed he can prove. And  
16 ultimately, there will be a trial -- unless the settlement  
17 is approved, ultimately there will be a trial, but for  
18 purposes -- at which time, the evidence will have to come  
19 in, and so forth.

20 But for purposes of today, one of the  
21 considerations for the Court is the likelihood of success,  
22 and so Mr. Womack, I think, can appropriately testify as to  
23 those factors that cause him to believe that he has a, he  
24 testified a 90 percent of prevailing on the discharge case.  
25 And so --

1 THE COURT: But he can also do that by not  
2 necessarily stating the hearsay in his answer.

3 MR. PATTEN: Well, Your Honor, it isn't  
4 necessarily offered for the proof of what it's asked for.

5 THE COURT: No. All I'm saying is he can address  
6 his answer to take that into account based upon the  
7 factors.

8 MR. PATTEN: Okay. Are you --

9 THE COURT: I'm going to sustain the objection  
10 and allow you to rephrase the question. And I think  
11 Mr. Womack can, can answer it as to what factors he's  
12 relying upon under his complaint --

13 MR. PATTEN: Okay.

14 THE COURT: -- but he can do it without having to  
15 recite hearsay as the basis.

16 MR. PATTEN: Okay.

17 Q. (By Mr. Patten) So, Mr. Womack, have you been provided  
18 any documentation regarding this bank account?

19 A. Yes.

20 Q. What bank was it at?

21 A. U.S. Bank of Billings.

22 Q. Do you have exhibits in front of you?

23 A. Yes.

24 Q. Do you have, I believe it's Meridian's Exhibit No. 17,  
25 which is a Document 285-29?

1 THE COURT: Let's make sure we use the exhibit  
2 numbers that are off of the docket when we're -- I mean,  
3 you can clarify here, but I want to make sure the record's  
4 clear that we're using 285-29 as the exhibit; otherwise,  
5 we're going to have real confusion in the record.

6 MR. PATTEN: It is Meridian Exhibit No. 17.

7 THE COURT: Yeah, but these aren't on the docket,  
8 is what I'm saying, as I understand it. Isn't there -- you  
9 just -- I thought you just said it was 285-29.

10 MR. PATTEN: That's the docket number, but on  
11 Meridian's exhibit list, it's No. 17. And when it was,  
12 when it was filed, it's at Docket No. 285-29.

13 THE WITNESS: I have it. It's Docket No. 285-29.

14 THE COURT: Okay, okay, we already have  
15 confusion. Let's say we have an appellate judge looking at  
16 this. We're talking about Exhibit 17, we're talking about  
17 some other exhibit. There is nothing like that in this  
18 docket. And I'm not admitting these exhibits; I'm  
19 admitting these exhibits.

20 And so I think we need to be clear that if we're  
21 talking about one exhibit here, that we also give the  
22 corresponding number off the docket. Do you see what I'm  
23 saying? So there's no confusion that it's 285-29 off the  
24 docket that we're using as the actual exhibit. That's what  
25 I'm admitting.

1 MR. PATTEN: Okay.

2 THE COURT: Make any sense?

3 MR. PATTEN: Well, maybe I'm -- I don't follow,  
4 Your Honor. It's marked as Exhibit 17, and then it has a  
5 docket number at the --

6 THE COURT: But these aren't admitted. These are  
7 just for informational -- for purposes of use here in the  
8 courtroom, right?

9 MR. PATTEN: Well, correct, but I'm getting to  
10 that, to the point of trying to get it admitted.

11 THE COURT: Well, but isn't it on the docket  
12 already?

13 MR. PATTEN: I don't -- it's, it's on the docket  
14 only as a prefiled exhibit for this hearing.

15 THE COURT: Well, those are the exhibits I admit.  
16 I don't turn around and have -- then Mr. James is going to  
17 have to go back to his office and put all of these other,  
18 these exhibits in as you've referred to them as, what, 17  
19 or whatever.

20 THE CLERK: Judge, it actually is -- on the  
21 Docket 285, it is marked as Exhibit 17. It's just the 29th  
22 attachment to Docket 285.

23 THE COURT: Thanks for the clarification, okay.

24 THE CLERK: No problem.

25 MR. PATTEN: I'm sorry if I created confusion,

1 Your Honor.

2 THE COURT: No, I was thinking they were -  
3 (inaudible) - numbers, you know, Exhibit 27 was Exhibit --  
4 really 27 --

5 MR. PATTEN: Okay.

6 THE COURT: -- not 16.4.

7 MR. PATTEN: Okay.

8 THE COURT: Now I'm up to speed with you. Thank  
9 you.

10 MR. PATTEN: Thank you, Patti.

11 Q. (By Mr. Patten) Mr. Womack, did you look at  
12 Exhibit 17?

13 A. Yes. Docket No. 285-29, if that helps.

14 THE COURT: Yeah, thank you.

15 Q. (By Mr. Patten) And is the information that is set out  
16 on Exhibit 17, did that enter into your belief that you  
17 have a 90 percent chance of prevailing?

18 A. Yes.

19 Q. And what do you understand the transactions were that  
20 Dr. Schneider had access to the funds in this account?

21 A. My belief is based on my investigation and evidence  
22 collected. That indicated to me that Dr. Schneider  
23 received the ATM card for the U.S. Bank account that, even  
24 though the account was held in another name, that it was,  
25 in fact, controlled by Dr. Schneider, that the funds were

1 owned by Dr. Schneider, and that nothing was done with  
2 those funds in that account except at his direction. That  
3 was my belief based on my investigation, and that, I  
4 believe, I can show at trial.

5 Q. Was that investigation done as part of the discovery in  
6 AP 15-20?

7 A. No. It was done as part of my duties as a trustee  
8 prior to filing a lawsuit against Kathleen Burrows and then  
9 as part of the lawsuit against Kathleen Burrows on the  
10 preference claim that we brought against her.

11 MR. PATTEN: Your Honor, I would move the  
12 admission of Meridian's Exhibit No. 17.

13 THE COURT: Okay. Any objection?

14 MR. COSSITT: Yeah, authentication, lack of  
15 foundation.

16 MR. PATTEN: The witness has authenticated it by  
17 saying that he obtained it in the course of his duties as  
18 trustee, and he obtained it in -- and also as part of the  
19 adversary proceeding. I don't remember the number, 15-8,  
20 or something --

21 THE WITNESS: Dash eight.

22 MR. PATTEN: -- the one against Burrows.

23 THE COURT: I'm going to overrule and allow it  
24 in, admit it.

25 MR. PATTEN: Thank you, Your Honor.

1 Q. (By Mr. Patten) Mr. Womack, was -- did the debtor's  
2 schedules reflect anywhere the debtor's access to the funds  
3 in this U.S. Bank account?

4 A. No.

5 Q. Did the debtor testify at his 341 meeting that his  
6 schedules were complete and accurate?

7 A. Yes, he did.

8 Q. Did the debtor, in any -- how many 341 meetings were  
9 there?

10 A. I don't know, I lost count after awhile. At least  
11 three or four -- three, I believe.

12 Q. And did the debtor ever identify that he had access to  
13 the funds in his U.S. Bank account?

14 A. No, he did not.

15 Q. Do you know where the funds on -- out of this account  
16 ultimately went, the ones that weren't otherwise drawn  
17 down?

18 A. Yes.

19 Q. Where?

20 A. To Michelle Schneider.

21 Q. Are there other instances, other actions or failures to  
22 disclose that you believe give you the 90 percent chance of  
23 prevailing on the discharge suit?

24 A. Yes.

25 Q. What is that? What else?



1 A. Well, another instance was with respect to a  
2 Harley-Davidson motorcycle. We did a search of the  
3 division of motor vehicle records to determine what titled,  
4 registered vehicles were held by Dr. Schneider or his wife  
5 or his children, and a Harley-Davidson motorcycle came up  
6 as part of that.

7 THE CLERK: Judge?

8 UNIDENTIFIED SPEAKER: We're still connected.

9 (Pause in recording.)

10 UNIDENTIFIED SPEAKER: (Inaudible) -- can you  
11 hear me?

12 THE CLERK: Yes, we can.

13 UNIDENTIFIED SPEAKER: Okay. Thank you,  
14 Ms. Mahoney. Sorry, Your Honor.

15 THE COURT: Thank you, Michael.

16 UNIDENTIFIED SPEAKER: Michael?

17 UNIDENTIFIED SPEAKER: Yes.

18 UNIDENTIFIED SPEAKER: Can you please get on the  
19 four-person view? We can only see the judge right now.  
20 Thank you very much.

21 UNIDENTIFIED SPEAKER: How is that?

22 THE CLERK: We've got the four quadrants up,  
23 Michael. Thank you. The pictures are horrible, but we'll  
24 make due.

25 Your Honor, I'm sorry, I'm not sure what

1 happened. We lost you right when Joe was saying they found  
2 out about the Harley-Davidson.

3 UNIDENTIFIED SPEAKER: The system got turned off.

4 THE COURT: Which time?

5 THE CLERK: Right -- I am so sorry. Right when  
6 they were talking about they did the, the title search  
7 through the Department of Motor Vehicles in Mr. and  
8 Mrs. Schneider's name and their children's name. And Joe  
9 said that's when they discovered the Harley, and that was  
10 at like 2:01.

11 THE COURT: So does it include the three  
12 objections by Mr. Gardner, Mr. Cossitt, and Mr. Parker?

13 THE CLERK: (Inaudible) -- Billings' whole system  
14 shut down.

15 THE COURT: I know, but I'm just trying to figure  
16 out where we were at in the process as to --

17 THE CLERK: Joe had just said how he discovered  
18 the Harley-Davidson, and then we lost you. We got no  
19 objections on the record.

20 THE COURT: Okay. Do you know where you were in  
21 your questioning there?

22 MR. PATTEN: Yeah. I think it was a long time  
23 ago.

24 THE COURT: That's my concern.

25 MR. PARKER: Your Honor, maybe I can be an aid to

1 Court. It sounds to me like Mr. Womack holds the view that  
2 he could win the discharge case and he views that he could  
3 win it 90 percent of the time.

4 THE COURT: Correct.

5 MR. PARKER: I think once -- I do not believe  
6 that the cross-examination is designed to knock him off  
7 that notion; I think it's just designed to have it repeated  
8 as many times as possible. We know what his opinion is,  
9 they're not trying to knock him off of it, so why don't  
10 we -- I would suggest we move on.

11 MR. COSSITT: Could I add some gloss to that?

12 THE COURT: Mr. Cossitt.

13 MR. COSSITT: You know, Your Honor, the cases  
14 hold (quoted as recorded):

15 "A mini-trial on the merits of the claims or the  
16 bankruptcy judge's independent investigation into the  
17 underlying dispute sought to be compromised is not  
18 required," Walsh Construction 669 F.2d 1335.

19 THE COURT: Exactly, exactly.

20 MR. COSSITT: And then further, the -- In Re:  
21 Lee Way Holding Company, 120 BR 881 at page 891,  
22 bankruptcy, Southern District of Ohio, 1990, that case  
23 stands for the proposition that, again, the Court's role in  
24 reviewing the compromise is not to conduct a trial or a  
25 mini-trial or decide the merits of the individual issues:

1           "The more complex and novel the subject  
2 litigation is, the less thorough a factual record is  
3 necessary to obtain approval of a settlement that will  
4 substantially benefit the bankruptcy estate."

5           My objection is relevance. I think we're getting  
6 down to the point in these proceedings where we're drilling  
7 down into the minutia of factual detail that's necessary to  
8 prove up the underlying claims. My clients objections on  
9 the basis of relevance and requests the Court to sustain  
10 the objection. Thank you.

11           THE COURT: Well, at this point, with you having  
12 asked about the probabilities, I think Mr. Patten's  
13 questions are going to those probability questions in  
14 cross. That's how I'm looking at it.

15           And maybe he -- Mr. Patten, are you disputing  
16 those percentages?

17           MR. PATTEN: No. I want the record to be clear  
18 that the trustee has a very strong case on denial of  
19 discharge. And if, if the defendant will acknowledge that  
20 there's a prima facie case that Mr. Womack can prove at  
21 trial, then I think that probably meets my objective,  
22 but --

23           THE COURT: Well, based on what you just said, I  
24 concur with Mr. Cossitt, Mr. Parker, and Mr. Gardner that I  
25 think the testimony this morning established his

1 percentages of 90 percent in the dischargeability case, and  
2 I think you're just adding to that at this point unless  
3 you're questioning that percentage, which it doesn't sound  
4 like you are.

5 MR. PATTEN: I'm -- 90 percent is pretty good,  
6 Your Honor.

7 THE COURT: Yeah. So, in essence, in essence, we  
8 should move on.

9 MR. PATTEN: Okay.

10 Q. (By Mr. Patten) Mr. Womack, you acknowledge that  
11 the -- at least from the amount of the claims that have  
12 been filed, the unsecured creditors overwhelmingly object  
13 to the settlement.

14 A. They do; although, as the point has been made, many of  
15 them, if not the majority, are contingent, unliquidated,  
16 disputed.

17 Q. And do you know how many of them were in some legal  
18 process for becoming liquidated and noncontingent at the  
19 time the bankruptcy was filed?

20 A. Several very large claims were in that process.

21 Q. Okay.

22 A. In fact, they were on -- one in particular was on the  
23 verge of trial, and it was only because the bankruptcy was  
24 filed that the trial was vacated. I believe the bankruptcy  
25 was filed on a -- if I'm not mistaken, the bankruptcy was

1 filed on a Friday and trial was to commence the following  
2 Monday.

3 Q. Would you agree that the filing of the bankruptcy  
4 precludes our clients from liquidating and making  
5 noncontingent their claims in this case?

6 A. Yes.

7 Q. And --

8 A. Well, without relief from stay.

9 Q. Would you agree that the claims have been filed for  
10 approximately a year?

11 A. More than that.

12 Q. Okay. And the objections to the claims were just filed  
13 within the last 30 days?

14 A. Yes.

15 Q. So nobody took any steps prior to this -- your motion  
16 for settlement being opposed by my clients, until that  
17 happened, nobody objected to my client's claims?

18 A. That's correct.

19 Q. Do you, Joe, believe that, that Mr. Moyers and my  
20 clients are incapable of determining what is in their best  
21 interest with respect to the settlement --

22 A. No.

23 Q. -- as proposed?

24 A. No. They have to make their own independent judgment.  
25 They have that right.

1 MR. PATTEN: Excuse me a second, Your Honor.

2 Q. (By Mr. Patten) Are you aware of any policies with  
3 respect to a debtor buying a discharge?

4 A. There's a lot of case law with respect to that issue.  
5 Yes, I am aware of policy considerations, and I addressed  
6 that in my brief.

7 Q. Does the debtor's honesty play into implementing --

8 A. Yes.

9 Q. -- that public policy?

10 A. Yes.

11 Q. And do you have an opinion as to whether the debtor's  
12 been honest in this case?

13 A. Yes.

14 Q. What's that opinion?

15 A. He has not.

16 MR. PATTEN: Okay, thank you.

17 MR. JAMES: Good afternoon, Your Honor. Doug  
18 James on behalf of Meridian.

19 Good afternoon, Mr. Womack.

20 THE COURT: You know, Mr. James, I hate to delay  
21 your cross-examination, but it kind of came up -- I mean,  
22 really, the real important thing here, and I think we  
23 started off this morning having some discussion about it,  
24 you know, if you look at the compromise in 15-15 without  
25 the tie to 15-20, I think there's probably some very good

1 reasons, justifiably, to accept that offer to bring cash in  
2 in some very litigious litigation that's going to go  
3 forward over a long length of time and be very expensive.

4           Unfortunately, 15-20 is tied with it, with the  
5 dollar amount that's imposed there, which really is the  
6 most concerning thing. And I think I raised this with  
7 Mr. Gardner early on. That's, that's the issue that I have  
8 to wrestle with.

9           And am I going to go down the road with, with a  
10 debtor coming forward and saying, "Well, I'll give you 'X'  
11 dollars. Let me have my discharge"?

12           Which obviously is one, one approach, but it  
13 certainly flies in the face of tenets of bankruptcy for the  
14 honest but unfortunate debtor. And I think I mentioned  
15 that that's a real difficult precedent to set because in  
16 one instance, somebody has some money that maybe they can  
17 put into the estate for distribution to creditors that gets  
18 them a discharge.

19           There's another debtor that comes in -- there's,  
20 there's just no way that they have the resources to do that  
21 and yet they get stuck with, with a nondischargeable --  
22 nondischargeability. And that's what I have to wrestle  
23 with from a policy standpoint.

24           You know, and we've heard a lot of testimony  
25 about the nature and the factors -- the nature of the



1 claims, the factors that I need to look at under A & C, but  
2 the one thing that I'm going to really focus on is a  
3 pretty -- not "insignificant" factor, but one factor in  
4 this, of the 450 -- 450,000 being put in AP 20 with a tie  
5 to 15-15, and does that constitute an inappropriate  
6 distribution of money to the estate to get -- to buy a  
7 discharge?

8 That's what I'm going to have a look at. I mean,  
9 that's the real issue here. As you know, every one of you  
10 in this room, as counsel, know that we've dealt with  
11 compromises and settlements, and the bankruptcy code  
12 supports that, and especially in litigation like this that  
13 could go on for years and be costly and may not be  
14 recoverable ever, as Mr. Womack testified to this morning  
15 has happened in other cases.

16 And so I guess I'd really like to focus you to  
17 that, that element, that question that I've got to look at  
18 in: How does that fit into the fair and equitable  
19 resolution whether I approve the compromises or I throw  
20 this into continuing litigation for which may not be in the  
21 best interests of the creditors, ultimately, based upon the  
22 testimony I've heard today?

23 So I guess if we could focus to that, I think  
24 that's really the issue that I've got to wrestle with. If  
25 anyone disagrees, you can certainly bring it up in your

1 cross-examination or testimony, but that's how I see it.

2 MR. JAMES: May I proceed, Your Honor?

3 THE COURT: Pardon?

4 MR. JAMES: May I proceed?

5 THE COURT: You may proceed.

6 MR. JAMES: Thank you.

7 CROSS-EXAMINATION

8 BY MR. JAMES:

9 Q. Mr. Womack, if the Court denies your motion to approve  
10 the settlement of the discharge case, AP 20, will you  
11 continue trying to settle the balance of the case?

12 A. Yes.

13 Q. Do you think that it would be worth your efforts and  
14 your time to try and settle this case without the discharge  
15 being a part of the settlement?

16 A. I'm always willing to try. And I think it, yes, I  
17 think it will be worth my efforts to try. I certainly  
18 will.

19 Q. Under the settlement as proposed, Dr. Schneider retains  
20 his 401(k) account with approximately \$1.5 million,  
21 correct?

22 A. Yes.

23 MR. COSSITT: Objection; leading. Counsel's  
24 testifying.

25 MR. JAMES: It's an adverse witness, Your Honor.

1 I am objecting to his settlement.

2 THE COURT: Overruled.

3 Q. (By Mr. James) And MedPort will retain the California  
4 mansion that it purchased at roughly \$1.9 million, correct?

5 A. Yes.

6 Q. And you recorded a notice of lis pendens against the  
7 California mansion, correct?

8 A. Yes.

9 Q. Earlier, you testified regarding the Meridian  
10 arbitration. I just wanted to focus on a couple of things  
11 with respect to that.

12 Have you read all of the pleadings in the Meridian  
13 arbitration?

14 A. Not every, not every one of them.

15 Q. Have you attended all of the depositions?

16 A. No.

17 Q. Do you know who's been deposed?

18 A. Not every single party. I do know a significant  
19 number, but I couldn't tell you every one.

20 Q. Okay. Can you tell me who has been deposed?

21 A. Dr. Schneider has been deposed; expert witnesses have  
22 not, although reports have been submitted; the principals  
23 in the case I believe have been deposed; and the people  
24 with Meridian Surgical Partners, I believe some of those  
25 people have been deposed.

1 Q. Have you reviewed the documents that have been produced  
2 in the arbitration?

3 A. Some of them, yes.

4 Q. Have you reviewed the expert disclosures?

5 A. Yes, so far.

6 Q. And Dr. Schneider valued his individual claim against  
7 Meridian in his bankruptcy schedules at \$15 million,  
8 correct?

9 A. Yes.

10 Q. And did you conclude that his claim was not worth  
11 \$15 million?

12 A. Yes.

13 Q. Do you know if Meridian has filed a motion for summary  
14 judgment to dismiss Dr. Schneider's individual claim in the  
15 arbitration?

16 MR. COSSITT: I'm going to renew the objection I  
17 made a little while ago, Your Honor. We're drilling down  
18 to the mini-trial that the four factors tell us isn't  
19 necessary. So my objection is relevance, cumulative, and  
20 redundant; and particularly, relevance.

21 THE COURT: I'm going to overrule that and allow  
22 him to answer.

23 THE WITNESS: I believe you did, did you not -- I  
24 mean, sorry, Judge, yes.

25 Q. (By Mr. James) Mr. Womack, under the proposed

1 settlement of the discharge adversary, the bankruptcy  
2 estate will receive property or \$450,000 cash, correct?

3 A. Under AP 20.

4 Q. Yes.

5 A. Property that would be attributable to AP 20 of  
6 450,000.

7 Q. And Dr. Schneider's home has been listed for sale in  
8 2015 and 2016, correct?

9 A. Yes.

10 Q. And what was the listing price?

11 A. It was less than that. It was six -- I'm trying to  
12 recall. It was like 620,000, I believe, or something in  
13 that neighborhood, perhaps even less. I was not a party to  
14 that listing agreement.

15 Q. Would you turn to Exhibit 9, and can you identify that  
16 document for us?

17 A. Yes. That is the advertisement. And apparently,  
18 during the last listing, it was for \$599,900.

19 Q. Exhibit 9 was the listing advertisement for  
20 Dr. Schneider's house?

21 A. Correct.

22 MR. JAMES: I would move the admission of  
23 Exhibit 9.

24 THE COURT: Any objection?

25 UNIDENTIFIED SPEAKER: No.

1 MR. COSSITT: Yes. First, I don't understand  
2 which -- is it Document No. 285-15?

3 THE COURT: Yes. Correct, Mr. James?

4 MR. JAMES: It is our Exhibit 9, which is part of  
5 285. I don't have the particular --

6 THE COURT: Okay.

7 THE CLERK: It's 15, Your Honor, and Mr. Cossitt.

8 THE COURT: Yeah, it is 15.

9 THE WITNESS: Yes.

10 MR. COSSITT: All right. We object to  
11 authentication. There's not -- this looks like a web page,  
12 and it's not properly authenticated.

13 MR. JAMES: Perhaps I can clarify, Your Honor.

14 Q. (By Mr. James) Mr. Womack, in connection with your  
15 investigation of the assets of Dr. Schneider, have you seen  
16 Exhibit 9 before?

17 A. Yes.

18 Q. And is this something you took into consideration in  
19 deciding whether or not to enter into these settlements?

20 MR. GARDNER: Objection, Your Honor. This is  
21 dated well after -- or after the settlement was entered.

22 THE COURT: Sustained.

23 Q. (By Mr. James) Have you received any offers to  
24 purchase the home on Tommy Armour Circle?

25 A. No.

1 Q. So if the settlement is approved, you will then have to  
2 maintain and sell the home, correct?

3 A. Yes.

4 Q. And you'll have to employ and pay a realtor, correct?

5 A. Yes.

6 Q. And the standard residential real estate commission in  
7 Billings is 7 percent?

8 A. You can usually get them to do it for six.

9 Q. So if Dr. Schneider's home sold for \$450,000, a 6 or  
10 7 percent commission would be roughly \$30,000?

11 A. Yes. I think that's a low -- 450 is far lower than  
12 what I think it will sell for.

13 Q. And the bankruptcy estate would incur other costs and  
14 expenses in connection with the sale of the home such as  
15 title insurance and closing fees, correct?

16 A. Yes.

17 Q. So if the estate has to sell Dr. Schneider's home, it's  
18 likely to net less than \$450,000?

19 A. I disagree with that assessment. I think it will net  
20 more than 450,000.

21 Q. From the sale of the house?

22 A. Yes.

23 Q. And that will -- what are you projecting as the sales  
24 price?

25 A. Six hundred fifty. I had a drive-by done on the

1 property by a realtor early in the case. And based on  
2 that, they believed that 650 was reasonable.

3 Q. But if it sells for 650, only 450 of that would still  
4 be allocated towards AP 20, correct?

5 A. Towards AP 20, but it will still come -- the full  
6 amount will come into the estate.

7 Q. Okay. Prior to the first meeting of creditors, did you  
8 request some documents from Dr. Schneider?

9 A. Yes.

10 Q. And did Dr. Schneider provide you with the requested  
11 documents 14 days prior to the first meeting of creditors?

12 A. No, not all of them.

13 Q. These are the documents that are required pursuant to  
14 local bankruptcy rule in Form 33?

15 A. Yes.

16 Q. And did Dr. Schneider provide you with the documents  
17 that you asked for at the first meeting of creditors?

18 A. No, not all of them.

19 Q. Did you continue the first meeting of creditors more  
20 than once because Dr. Schneider hadn't provided you with  
21 all of the requested documents?

22 MR. COSSITT: I'm going to renew the objection  
23 again, Your Honor. Again, we don't need to conduct a  
24 mini-trial on the specific allegations in the 727  
25 complaint. We've received extensive testimony on it this



1 morning, and I -- with all due respect, I think this line  
2 of questioning drills down well below the level that the  
3 appropriate -- or the applicable case law that I cited a  
4 few minutes ago tells this court that it doesn't need to  
5 get to. Thank you.

6 MR. JAMES: Well, Your Honor, I'm leaning towards  
7 the policy issues that you had raised earlier. And with a  
8 little latitude, I will get to that briefly.

9 THE COURT: Like in the next question or two.

10 MR. JAMES: Yes.

11 THE COURT: I'll sustain the objection.

12 Q. (By Mr. James) Can you identify Exhibit 1, please?

13 A. Exhibit 1, Document No. 285-1 is a letter from myself  
14 to Harold Dye, Dr. Schneider's attorney, with respect to  
15 documents needed.

16 MR. JAMES: I would move the admission of  
17 Exhibit 1.

18 THE COURT: Any objection?

19 (No audible response.)

20 THE COURT: Hearing none, Exhibit 1 is admitted.

21 Q. (By Mr. James) Did Dr. Schneider provide you with the  
22 documents requested in Exhibit 1 -- (inaudible)?

23 MR. COSSITT: Objection, same objection, Your  
24 Honor: Relevance, drilling down into the mini-trial on the  
25 merits that we don't need to go to.

1 THE COURT: Well, I'm going to give Mr. James at  
2 least a couple questions on this because I'm not sure that  
3 he's drilling down.

4 Q. (By Mr. James) Mr. Womack, could you identify  
5 Exhibit 2?

6 A. Yes. Exhibit 2, Docket No. 285-2, is my motion for a  
7 turnover of documents that I had requested -- or that I  
8 wanted that had not been supplied to me.

9 Q. And can you identify Exhibits 4 and 5, please?

10 A. Exhibit 4, Document No. 285-4, is the order of the  
11 Court granting the motion for turnover of the documents.

12 Exhibit 5, Document No. 285-5, is a copy of the motor  
13 vehicle search that was, of a motor vehicle search that --

14 Q. Excuse me, I misspoke. It was Exhibit 4 that I was  
15 asking about.

16 A. Exhibit 4?

17 Q. That was --

18 A. Exhibit 4 is -- 285-4 is the order granting the motion  
19 for turnover.

20 MR. JAMES: I would move the admission of  
21 Exhibits 2, 3, and 4.

22 THE COURT: Any objection?

23 UNIDENTIFIED SPEAKER: I have no objection.

24 MR. COSSITT: You know, the same relevance  
25 objection, Your Honor. We're heading right down into the

1 mini-trial on the merits. I object.

2 THE COURT: Okay, you may object. I'm going to,  
3 I'm going to admit them, two, three, and four, but  
4 Mr. Womack, aren't these the same documents that you've  
5 utilized in analyzing your claims in the Adversary 15-20.

6 THE WITNESS: Yes, the lack of production of  
7 those; yes.

8 THE COURT: I mean, I don't know what else you  
9 need.

10 MR. JAMES: Just one question, Your Honor.

11 Q. (By Mr. James) And that is: Mr. Womack, did  
12 Dr. Schneider disobey a lawful order of this court with  
13 exhibit to Exhibit No. 4?

14 A. In my opinion, yes.

15 Q. He did not produce to you the documents that he was  
16 ordered to produce by the Court's order of Exhibit 4,  
17 correct?

18 MR. COSSITT: Objection --

19 UNIDENTIFIED SPEAKER: Objection.

20 MR. COSSITT: -- asked and answered, cumulative,  
21 and redundant.

22 THE COURT: I'm going to sustain.

23 MR. GARDNER: What he said.

24 THE COURT: I'm going to sustain because I think  
25 he's already testified that he took into those matters -

1 (inaudible) - in his 15-20 complaint.

2 Q. (By Mr. James) Mr. Womack, I would ask you to turn to  
3 Exhibit 11 and identify that document, please.

4 A. Exhibit 11, Document No. 285-11, is my objection to  
5 Debtor's motion to continue the hearing for today.

6 Q. And would you read Paragraph 8, please?

7 A. (Quoted as recorded): "Trustee is deeply concerned  
8 that debtor and Michelle will continue to violate the stay  
9 and to dissipate assets and potential assets of the estate  
10 and are attempting to delay the hearing regarding the  
11 settlement agreements and attempt to obliterate potential  
12 assets for recovery should the settlements not be  
13 approved."

14 MR. JAMES: I would move the admission of  
15 Exhibit 11.

16 THE COURT: Any objection?

17 UNIDENTIFIED SPEAKER: Hearsay.

18 MR. COSSITT: Objection in terms of  
19 authentication because this appears to be a printout from a  
20 social media or web page and --

21 THE COURT: I don't think we have the right  
22 exhibit here.

23 MR. COSSITT: Eleven? Eleven is a motion, and  
24 attached to the motion there's extensive printouts, there's  
25 email that's attached to it. If I've got the right one,

1 it's Docket No. 285-17. Exhibit 11 --

2 THE COURT: My Exhibit 11 is a trustee's  
3 objection.

4 MR. COSSITT: Trustee's objection. And it's  
5 my -- the pdf I downloaded is 20 pages, and it contains  
6 email, web pages, a whole bunch of stuff. I'll stipulate  
7 to the admission of what I believe to be the first seven  
8 pages.

9 MR. JAMES: I believe you have the wrong exhibit,  
10 Mr. Cossitt.

11 MR. COSSITT: I'm sorry.

12 THE COURT: Well, he --

13 THE CLERK: No, he doesn't.

14 MR. GARDNER: No, he has the right exhibit.

15 THE COURT: No, he may have the right exhibit  
16 because at the end of it, there's all kinds of materials  
17 attached regarding their house.

18 THE WITNESS: Those were attachments to the  
19 motion, Your Honor.

20 THE COURT: Yeah, to your - (inaudible) -  
21 objection.

22 THE WITNESS: Yeah, to my objection. I'm sorry.

23 MR. GARDNER: Your Honor?

24 THE COURT: Mr. Gardner.

25 MR. GARDNER: I object on relevance. This

1 postdates the settlement, it postdates the filing of the  
2 discharge complaint, it postdates anything that went into  
3 entering into the settlement.

4 THE COURT: It merely goes to the continuance of  
5 the hearing that we were going to have because of absence  
6 of parties, I believe, right?

7 MR. JAMES: Your Honor, I think it goes to the  
8 misconduct of the debtor and the egregiousness of the  
9 unusual circumstances here.

10 The Court is facing a huge public policy decision  
11 as to whether or not to grant someone a discharge. We  
12 believe it is relevant and important for the Court to take  
13 into consideration the debtor's misconduct prepetition,  
14 postpetition, and post-settlement. And this exhibit  
15 clearly shows that even after the settlement, the trustee  
16 had continuing concerns that the debtor was going to  
17 dissipate the estate and transfer and conceal assets. And  
18 we think that's very material and is further reason why  
19 this court should not accept the settlement.

20 MR. PARKER: Your Honor, if I can be heard, the  
21 agreement with -- in this case - (inaudible) - continuing  
22 duties and continuing promises and representations.  
23 It's -- nothing's been hidden. The discharge will not  
24 affect that so far as I'm aware. And so if something's  
25 hidden out there, the discharge won't affect it an iota,

1 and I -- and we would object to this line of inquiry.

2 THE COURT: Mr. Cossitt.

3 MR. COSSITT: You know, Your Honor, again,  
4 foundation with respect to everything except the first  
5 seven pages of 285-17, the first -- my client stipulates to  
6 admissibility of the first seven pages of 285-17. We  
7 object to the rest of it because it hasn't been properly  
8 authenticated as web pages or email.

9 And last but not least, Counsel seems to be  
10 embarking on a line of questioning that's prohibited by  
11 Federal Rule of Evidence 404, character evidence that is  
12 admissible only in very limited circumstances. So in  
13 addition to my other grounds of obligations, we further  
14 object under Rule 404. Thank you.

15 THE COURT: Well, the first seven pages are going  
16 to be admitted.

17 Q. (By Mr. James) Dr. Schneider owns a home located at  
18 3611 Tommy Armour Circle in Billings, correct?

19 A. He and his wife Michelle do.

20 Q. Did you authorize Dr. Schneider to list, market, and  
21 advertise, and sell that home postpetition?

22 A. No.

23 Q. Was Dr. Schneider attempting to sell the home without  
24 authority?

25 A. Yes.

1 Q. Postpetition, did you learn that Dr. Schneider was  
2 attempting to sell the contents of the home?

3 A. Yes.

4 Q. And how was he attempting to do that?

5 MR. COSSITT: Objection; relevance, Your Honor.  
6 This does have no connection of the four factors in the  
7 A & C test, the legal standards that govern today's  
8 proceedings.

9 MR. JAMES: Your Honor, it is material because  
10 the home was filled with contents that were not listed on  
11 the bankruptcy schedules, the expensive home furnishings of  
12 a successful physician. And postpetition, those assets  
13 were being sold and liquidated through an ad on Craigslist,  
14 and I would like to ask the trustee about that.

15 This misconduct is unprecedented, and I think  
16 this misconduct is something the Court should be aware of  
17 and should be able to take into consideration in  
18 formulating a decision.

19 MR. YORK: Your Honor, if I may.

20 THE COURT: Mr. York.

21 MR. YORK: There's been a lot today about four  
22 factors. I believe there's another factor, which is  
23 whether or not the settlement is tainted, and the cases  
24 recite that as a factor. The case, I believe, is In Re:  
25 Bullis. So whether or not the settlement is tainted is



1 also a factor, and that is a very equitable consideration.

2 MR. PATTEN: Your Honor, may I be heard?

3 THE COURT: Mr. Patten.

4 MR. PATTEN: Your Honor, bankruptcy is a  
5 process --

6 THE COURT: I don't know if they're going to pick  
7 you up.

8 MR. PATTEN: Bankruptcy a process where everybody  
9 is supposed to play by the rules, and someone shouldn't be  
10 able to violate the rules continually and then come in and  
11 say, "I still get a discharge because I'm going to throw a  
12 bunch of money at you."

13 And I think that's what's offensive to our  
14 clients. I believe that the debtor really is trying to buy  
15 a discharge here. He's trying to buy a discharge without  
16 producing any number of documents that Mr. James has been  
17 questioning Mr. Womack about. There hasn't been full  
18 compliance with all of the rules that all the rest of us  
19 have to play all the time, and he shouldn't get the benefit  
20 of a discharge simply because he's able to reach into some  
21 other resources and throw them at the creditors,  
22 particularly, Your Honor, when the creditors --

23 THE COURT: Well, he hasn't yet.

24 MR. PATTEN: -- don't want to accept the amount  
25 that he's throwing.

1 But I think this is all important to this policy  
2 question that you raised about: What sort of conduct must  
3 a debtor comply with in order to get a discharge, in order  
4 to meet the -- and comply with the public policy about not  
5 buying a discharge?

6 THE COURT: Well, this may be conduct beyond  
7 bankruptcy.

8 You know, based upon the -- the settlement is of  
9 the claims alleged in 15-15 and 15-20. That's what I'm  
10 considering when I apply the factors and look at what's  
11 there. Now, Mr. York raises another potential element on  
12 tainting, but -- it is a big public policy issue, I don't  
13 disagree with you, but I think that there's been sufficient  
14 evidence submitted as to why Mr. Womack is submitting these  
15 proposals as well as conduct that's occurred both  
16 prepetition and postpetition.

17 I don't know what more you can really put in the  
18 record - although, you certainly have the opportunity to do  
19 so - that's going to necessarily further impact where I'm  
20 going to go with this. I mean, all of those issues have  
21 been testified to by Mr. Womack in one way or another, so  
22 I'm not sure -- it may become, as we've heard before, more  
23 cumulative than anything.

24 MR. JAMES: And we'll be brief, Your Honor.

25 THE COURT: Okay. I will allow you to proceed

1 briefly.

2 MR. JAMES: Thank you.

3 Q. (By Mr. James) Mr. Womack, could you explain to the  
4 Court what you learned about the debtor selling assets on  
5 Craigslist?

6 A. I learned, after the mediation was concluded, that he  
7 had submitted an advertisement to sell the contents, the  
8 remaining contents of the Tommy Armour property and the  
9 Whispering Winds Ranch property for cash until, until  
10 everything was gone.

11 Q. Could you identify Exhibit 10, please?

12 A. Exhibit 10 is what I understood to be a Craigslist  
13 advertisement for the contents of the Tommy Armour and  
14 Whispering Winds Ranch residences, the furniture and other  
15 things that were in there.

16 Q. Are these -- is this a document that you reviewed in  
17 your capacity as trustee for the estate?

18 A. Yes.

19 MR. JAMES: I move the admission of Exhibit 10.

20 THE COURT: Any objection?

21 MR. COSSITT: Yeah, I object. Authentication,  
22 improper foundation, lack of personal knowledge, too. This  
23 witness just testified "I understand it to be."

24 MR. JAMES: Your Honor, this is not being offered  
25 for the truth of what's contained in the document, but for

1 the fact that this is a document that the trustee reviewed  
2 as a part of his administration of the estate and what he  
3 found and learned as a part of his investigation.

4 MR. GARDNER: If, if that --

5 THE COURT: But he's using it for the truth of  
6 what's there, that there was property sold.

7 MR. JAMES: I can ask him about that, Your Honor.

8 THE COURT: Mr. Gardner, do you -- did you have a  
9 comment?

10 MR. GARDNER: My comment was simply: If it's  
11 just for what the trustee reviewed, I still object on  
12 relevance as it's all post-settlement and post filing of  
13 the subject litigation.

14 MR. COSSITT: And again, under Rule 404, Your  
15 Honor, if we were litigating the underlying adversary  
16 proceeding, then we can conjure up bad conduct all day  
17 along, but we're not litigating the underlying adversary  
18 proceedings.

19 I've sat here in the courtroom and listened to  
20 the comments from other counsel, including the  
21 representative of the United States Government. Those are  
22 all important considerations, we don't deny that. The  
23 question is: What are the evidentiary standards that  
24 govern what this court wants to receive today?

25 Again, my client urges the Court to continue to

1 stick to the four-factor test and objects to this entire  
2 line of questioning, that it is inappropriate for this  
3 proceeding but it may well be appropriate for an underlying  
4 trial on the merits. Thank you.

5 MR. YORK: Your Honor, I actually disagree with  
6 that. I think it's more likely that this information is  
7 relevant in this proceeding than in the underlying action.  
8 We're not going to decide today whether or not  
9 Dr. Schneider is, is not going to get his discharge. What  
10 we're deciding today is whether he can pay money in  
11 settlement and obtain a discharge. I think the  
12 considerations are broader in this proceeding than they  
13 might be in the underlying adversary.

14 And again, the main factor being: Is this  
15 settlement tainted?

16 THE COURT: I'm going to overrule the objection.  
17 I'll allow Exhibit 10.

18 Q. (By Mr. James) Mr. Womack, has Dr. Schneider provided  
19 you with a list of the assets that he sold on Craigslist?

20 A. No.

21 Q. You've toured his home on Tommy Armour, correct?

22 A. Yes.

23 Q. Had most of the furnishings been removed?

24 A. At that time, yes.

25 Q. Did you ask Dr. Schneider for a list of the furnishings

1 that had been removed?

2 A. I did.

3 Q. And did he ever provide that to you?

4 A. No.

5 Q. Did Dr. Schneider cooperate with you, as the trustee,  
6 to the extent that you expect a debtor to cooperate?

7 A. No.

8 MR. JAMES: I have nothing further, Your Honor.

9 THE COURT: Mr. York.

10 CROSS-EXAMINATION

11 BY MR. YORK:

12 Q. Mr. Womack, I just have one question for you: Would  
13 you be asking the Court to approve this settlement of the  
14 discharge action if Dr. Schneider was not offering to  
15 pay -- not offering to pay the estate \$450,000?

16 MR. GARDNER: Objection; speculation.

17 THE WITNESS: It is. It's not just, it's not  
18 just the 400 --

19 THE COURT: Just a moment, just a moment.

20 THE WITNESS: Sorry.

21 MR. YORK: This is not speculation. This is what  
22 the trustee himself is thinking, Your Honor. What he, what  
23 he settled --

24 THE COURT: I'm going to overrule that objection.  
25 I'm going to allow you to answer it if you know.

1 Q. (By Mr. York) Would you settle the discharge action  
2 without him offering to pay \$450,000 today?

3 A. That wasn't the only reason the discharge action was  
4 being settled. The way you phrased the question isn't an  
5 accurate representation of what is going on and what  
6 occurred here.

7 The reason for this: It's linked to AP 15-15 and all  
8 of those assets and the recovery of that. I wanted more --  
9 I wanted nonrecoverable assets, you know, exempt assets.  
10 That was why that was included in there as part of this.  
11 But to say -- I mean, it was a total package.

12 And the biggest thing for me was I thought that the PI  
13 people would be satisfied with this amount of money because  
14 it's substantial. And I think, frankly, the bottom line, I  
15 think it's better that -- the more we're going to end up  
16 when we go all the way through trial after everything is  
17 said and done and what's available for the people that have  
18 been harmed here in this case, and that's why I did it.

19 To say that, "Because he paid me \$450,000, I'm willing  
20 to do this," is simply, that's inaccurate, Mr. York.

21 Q. But it is the payment of money that's driving your  
22 quest to settle the discharge action; is that correct?

23 A. Not just the 450,000. It's, it's the, it's the global  
24 assessment, everything that we've talked about. I never  
25 entered into this settlement just viewing them separately.

1 Okay?

2 This is a, it's a global, it's a global issue, and what  
3 is going to be available to the creditors at the end of the  
4 day, and what's going to happen, the amount of resources  
5 that are going to be consumed by the Court, by everybody in  
6 this rule -- room, by the PI attorneys having to go and  
7 prove up their cases down in state court -- or Federal  
8 Court in Wyoming, I mean, all of those things.

9 This was an effort to bring everything to an end. And  
10 you keep talking about "tainted." And frankly, I  
11 understand why you're saying that, I understand the public  
12 policy considerations of the U.S. Trustee's Office against  
13 any kind of settlement of a, of a claim to deny discharge.

14 I disagree with that. I think that there are other  
15 human considerations that sometimes have to come into play.  
16 So, so it wasn't just the \$450,000, it wasn't just the  
17 money; it was the entire package that we talked about here  
18 today that was the reason I brought this forward.

19 MR. YORK: I said I would ask one, and I just  
20 asked one. Thank you.

21 THE COURT: Thank you. Any redirect?

22 MR. PARKER: Just briefly, Your Honor, I do  
23 have --

24 THE COURT: Mr. Parker.

25 MR. PARKER: At this time, Your Honor, Michelle



1 Schneider and the remainder of my clients will join in the  
2 trustee's motion to approve the settlement so we're  
3 formally on the record with that.

4 CROSS-EXAMINATION

5 BY MR. PARKER:

6 Q. Mr. Womack, did you require, as part of the agreement,  
7 that Dr. Schneider make representations as to his current  
8 assets?

9 A. Yes.

10 Q. Will those representations survive even if he --  
11 survive and create liability for him even if he is  
12 discharged?

13 A. Yes.

14 MR. PARKER: That's all I have, Your Honor.

15 THE COURT: Mr. Patten?

16 MR. PATTEN: (Inaudible) -- Your Honor.

17 THE COURT: Mr. Patten?

18 (No audible response.)

19 THE COURT: Mr. Gardner, did you have any  
20 questions?

21 MR. GARDNER: I'll let Mr. Patten go. I don't  
22 believe so.

23 CROSS-EXAMINATION

24 BY MR. PATTEN:

25 Q. Joe, who is at risk if the settlement is not approved?

1 A. Primarily, the creditors.

2 Q. The creditors that are opposed to the settlement.

3 A. Yes.

4 MR. PATTEN: Thank you.

5 THE COURT: Mr. Womack, you may step down.

6 THE WITNESS: Thank you, Your Honor.

7 I'll -- do you want your exhibits back?

8 MR. GARDNER: You can leave them up there.

9 THE WITNESS: Okay.

10 THE COURT: Next witness?

11 MR. PARKER: Yes, Your Honor. It may be a little  
12 bit -- (inaudible.)

13 THE COURT: Well, let me just double -- confirm  
14 with Mr. Gardner.

15 Any further witnesses, Mr. Gardner?

16 MR. GARDNER: I believe my -- the people who are  
17 supporting this motion are going to call Dr. Schneider and  
18 Michelle Schneider. I was going to let them call them  
19 instead of me.

20 THE COURT: Okay. Mr. Parker?

21 MR. PARKER: Michelle Schneider calls Michelle  
22 Schneider.

23 THE COURT: Okay. Ms. Schneider, if you could  
24 come to the podium, please, to be sworn.

25 MICHELLE SCHNEIDER, WITNESS, SWORN

1 DIRECT EXAMINATION

2 BY MR. PARKER:

3 Q. Would you please state your name for the record,  
4 please?

5 A. Michelle Renee Schneider.

6 Q. And where do you live now?

7 A. California.

8 Q. And are you a -- are you married to John Schneider?

9 A. Yes.

10 Q. How long have you been married?

11 A. Twenty-five years in March.

12 Q. And do you have any children?

13 A. I have three.

14 Q. And can you give the judge their first names and their  
15 ages?

16 THE COURT: You know, I'd just as soon not do the  
17 names, even, the first names.

18 Q. (By Mr. Parker) Okay. You have three children. Can  
19 you just give ages?

20 A. Eighteen, twenty-one, twenty-two.

21 Q. Are any living with you?

22 A. Eighteen-year-old.

23 Q. And during the course of your marriage to  
24 Dr. Schneider, who was the major breadwinner?

25 A. My husband.

1 Q. And what did he do?

2 A. He was a neurosurgeon.

3 Q. And what did you do while he was practicing surgery?

4 A. I raised the children and ran the house and whatever  
5 was asked of me as far as -- I raised our children.

6 Q. Did you ever homeschool?

7 A. Absolutely, all three.

8 Q. And how did they do their post-scholastic life after  
9 being homeschooled?

10 A. Two are in college presently, and one has graduated  
11 early, the 18-year-old, and she will entering college in  
12 September.

13 Q. Are you an RN?

14 A. Yes, sir.

15 Q. Are you in the position now to currently practice in  
16 nursing, however?

17 A. Yes. I am currently trying to get my ACLS and PALS,  
18 which is necessary enter a unit in a hospital.

19 Q. During the course of your marriage, Dr. Schneider, can  
20 you describe, because of his work, any extraordinary  
21 impacts on family life that, I hate to say you endured but  
22 were part of your life in terms of him -- like Target, for  
23 example, at the Target store when he gets called?

24 A. Oh, well, there were numerous times, well, because of  
25 his work and because of his dedication to his work, we were

1 left at stores and I had to get home or he was -- he had to  
2 quickly leave us in different situations in order to attend  
3 to the, the emergencies that he had to attend to because he  
4 was so dedicated and we were a partnership. I knew what  
5 that entailed. And he had to go, and I was the responsible  
6 party for our three children.

7 Q. And during that time, do you have an opinion as to  
8 whether or not Dr. Schneider would have been able to even  
9 accumulate the wealth we have here if you wouldn't have  
10 attended the home front?

11 A. I think if you look at financial along with the  
12 American dream as far as having children and a family, I  
13 think it would have been totally impossible.

14 I think we were a partnership. I raised the children.  
15 I would get up very early in the morning, send them to  
16 school, offer them the love and nurturing that they needed.  
17 If they went to school -- or if I stayed at home, I taught  
18 them math, I taught them English, I taught them rules, I  
19 made sure they ate correctly. I was responsible for their  
20 nutrition, I was responsible for their exercise, I was  
21 responsible for their faith.

22 The three children were my responsibility, and whatever  
23 came with that in order to keep them safe.

24 Q. Other than what attorneys and accountants have told you  
25 over this last three or four years, do you have any really

1 knowledge about the accounting, the intricacies, the  
2 businesses?

3 A. No, I do not, because again, we were a partnership.  
4 And early in our marriage, we knew -- it may be  
5 old-fashioned, but we knew what my responsibilities were  
6 going to be. And that's why I stopped nursing, to take  
7 care of our children.

8 And I knew what his --

9 Q. When you say "nursing," practicing nursing?

10 A. Practicing, yes, sir. And I -- and it was very clear,  
11 his responsibilities. I trusted him, he trusted me, and  
12 that's how he forged the success of, of what we did.

13 MR. PARKER: That's all I have.

14 THE COURT: Any cross-examination?

15 (No audible response.)

16 THE COURT: It doesn't appear so.

17 You may step down. Thank you -- (inaudible.)

18 Next witness?

19 MR. COSSITT: I guess if -- is the trustee  
20 concluded?

21 THE COURT: That is my understanding.

22 MR. GARDNER: Yes. I was going to you to call  
23 Dr. --

24 MR. COSSITT: Then I guess if the Court's so  
25 inclined, those of us that are proponents of the

1 settlement, I guess that comes down to me. And we'll call  
2 Dr. Schneider.

3 THE COURT: Very good. Mr. Schneider, if you'll  
4 come forward to be sworn, please.

5 If you could just stand right there by the  
6 podium, and the clerk will come on.

7 JOHN HENRY SCHNEIDER, DEBTOR, SWORN

8 DIRECT EXAMINATION

9 BY MR. COSSITT:

10 Q. Good afternoon, Doctor.

11 A. Sir.

12 Q. While you're on the witness stand, don't forget that if  
13 you need a bathroom break, water, or you just need a break,  
14 you need to say something to the Court. Okay?

15 A. Yes, sir.

16 Q. Okay. Your name, please?

17 A. John H. Schneider.

18 Q. Address?

19 A. Up until recently, 5611 Tommy Armour Circle; Billings,  
20 Montana 59106.

21 Q. Where are you living now, then?

22 A. Most of the time in the last two months has been at 543  
23 Camino De Orchidia; Encinitas, California.

24 Q. Okay. Would you briefly share with the Court your  
25 educational background?

1 A. Yes. I'm a -- I graduated from high school in 1979 in  
2 Southern California, went to the University of Southern  
3 California where I graduated summa cum laude in 1983.

4 I went to medical school and graduated at the top of my  
5 class in 1987, was -- received a full scholarship through  
6 the United States Air Force to go to medical school.

7 Q. So you were, what, a medical officer in the Air Force?

8 A. Ultimately.

9 Q. Oh, okay.

10 A. After medical school, I was accepted into a residency  
11 training program in first general, then neurological  
12 surgery at LA County-USC Medical Center in Southern  
13 California. I participated in that residency program  
14 obtaining ultimately a chief residency certification in  
15 1992 going into '93.

16 '93 into '94, I was hired as a junior staff member  
17 working at the -- those same institutions as a full-fledged  
18 neurosurgeon.

19 Q. Did you do any fellowship training after residency?

20 A. I did -- I actually included it or intertwined it within  
21 the residency. I did a six-month reconstructive spine  
22 surgery fellowship.

23 Q. Okay. Then post-residency and post-fellowship, you  
24 served in the Air Force?

25 A. Yes, sir. So the Air Force paid for my medical school.



1 Q. What years were you in the Air Force?

2 A. Went -- so once -- with the completion of my academic  
3 year at the University of Southern California, I entered  
4 the Air Force in early 1994 and was there until 1997.

5 Q. And you received an honorable discharge?

6 A. I did. I was, I was a major, and then I -- I started  
7 as a major in the United States Air Force as a neurosurgeon  
8 at Wilford Hall Medical Center and ultimately was a  
9 lieutenant colonel select, but left the Air Force in 1997  
10 with an honorable discharge.

11 Q. When was the last time that you actively engaged in  
12 practice as a neurosurgeon?

13 A. I practiced in neurosurgery up until February of 2013  
14 in my own private practice located in Montana and northern  
15 Wyoming. After February of 2013, my neurosurgical  
16 experience has been participating in surgeries outside of  
17 this country as well as teaching neurosurgical techniques  
18 inside of this country.

19 Q. When and where did you first become acquainted with or  
20 learn of estate or asset protection planning?

21 A. In medical school, and it certainly was reiterated in  
22 residency.

23 Q. Which topic, estate or asset protection?

24 A. A combination of both, but since I was being trained by  
25 neurosurgeons and neurosurgery is the highest litigious

1 subspecialty in medicine, the -- every academic professor  
2 had significant influence on every resident that protecting  
3 one's asset and protecting one's family was critical, as we  
4 were all going to get sued multiple times. I believe I can  
5 quote them on that.

6 Q. And that's -- that information you said was topics of  
7 discussion, did you say during residency --

8 A. Yes, sir.

9 Q. -- or post residency?

10 A. During residency.

11 Q. Okay. And this was the, the doctors that were the, the  
12 senior doctors that the residents practiced under who were  
13 sharing this information?

14 A. Right, the attending surgeons.

15 Q. "Attending," yeah. That's the word, excuse me.

16 As a result of the awareness of the asset and estate  
17 protection planning commentary and advice you were  
18 receiving, did you investigate it further?

19 A. I did.

20 Q. Briefly, what did you -- what did you do?

21 MR. PATTEN: Your Honor?

22 THE COURT: Yes.

23 MR. PATTEN: I would object on relevance. I  
24 don't know what this has to do with the four elements of  
25 the A & C factor or the additional element that Mr. York

1 has identified. This isn't a mini-trial, as we've been  
2 told repeatedly this afternoon, so I don't know what  
3 relevance the need for asset protection is in connection  
4 with the settlement.

5 THE COURT: Mr. Cossitt?

6 MR. COSSITT: It goes to the first factor of the  
7 four-factor test, success on the merits. My client --  
8 you're going to receive, the Court will receive testimony  
9 on the percentage chance of success of the merits that  
10 varies significantly from what the trustee offered a few  
11 minutes ago during his testimony. And this is  
12 foundational, foundational information that's going to  
13 buttress the opinion that I'll try to elicit from this  
14 witness with respect to success on the merits, which is the  
15 first factor of the test.

16 THE COURT: I'm going to --

17 MR. COSSITT: And it's a fundamental rule on --

18 THE COURT: -- overrule and allow him to -- some  
19 latitude.

20 MR. COSSITT: I'm sorry, excuse me.

21 THE COURT: You may proceed.

22 MR. COSSITT: Thank you.

23 Q. (By Mr. Cossitt) Dr. Schneider, what was the -- oh,  
24 the question was: Did you act on the advice and commentary  
25 that you had been exposed to?

1 A. I did.

2 Q. What did you do?

3 A. Well, certainly throughout my residency, we were  
4 working over 100 hours a week. I had --

5 Q. The question is "What did you do to act on the  
6 advice" --

7 A. I understand.

8 Q. -- "about asset protection?" sir, not how many hours  
9 you were working.

10 A. I ultimately hired the Brown Law Firm in 1998 here in  
11 Billings, Montana, to create our first estate and asset  
12 protection plan.

13 Q. And that was '98?

14 A. '98.

15 Q. A firm here in town?

16 A. Brown Law Firm.

17 Q. Okay. And did they create such a plan?

18 A. A complicated one, yes.

19 Q. Did you follow their advice and implement it?

20 A. To the letter.

21 Q. Did the Brown Law Firm advise you that these were  
22 appropriate planning and risk management tools?

23 A. Yes.

24 Q. Then what, then what trans -- so you implemented this  
25 plan. Then what?

1 A. In 2007, I had changed practice locations. I was  
2 practicing in northern Wyoming. I was a Wyoming resident.  
3 I hired new counsel, new counsel of the Greear Law Firm,  
4 Greear Clark King in Worland, Wyoming. Their specialty  
5 is --

6 Q. Did you say "Worland," sir?

7 A. Worland --

8 Q. Okay.

9 A. -- Wyoming. Their specialty is estate planing and  
10 business law. I trusted them and had many, many meetings  
11 with them as far as creating and re-creating estate plan --  
12 the estate plan.

13 Q. Okay. So that's the asset protection plan that was in  
14 place at the time you filed this bankruptcy case?

15 A. It is the estate plan of which asset protection is part  
16 of the plan, correct.

17 Q. Did the Greear Clark law firm in Worland give you  
18 extensive advice and counsel with respect to this course of  
19 action?

20 A. They did.

21 Q. Did you follow their advice?

22 A. I did.

23 Q. Have they advised you at any time that this asset  
24 protection planning or estate planning was inappropriate?

25 A. They did not.

1 Q. At the time you set up the initial plan back in '98  
2 with the Brown Law Firm, did you have any claims or  
3 lawsuits pending against you?

4 A. I did not.

5 Q. And in 2007, at the time you updated it and implemented  
6 it with the law firm down in Worland, were there any claims  
7 or lawsuits pending against you?

8 A. No.

9 Q. What -- I'd like to ask you to briefly summarize the  
10 events that led up to the bankruptcy filing.

11 A. Well, I was involved in litigation. I had spent a  
12 considerable amount of money on a single claim -- excuse  
13 me, on a single defense. I reviewed that in detail with  
14 Mr. Ron Jurovich, who is a -- participated in some of those  
15 defenses. And his specialty is bankruptcy law, he lives in  
16 Thermopolis, Wyoming.

17 Mr. Jurovich looked at all of the assets that we had  
18 that were owned by the various entities that had been set  
19 up by Mr. Greear, and he ultimately recommended that  
20 consideration of Chapter 7 bankruptcy was the most  
21 important thing to do.

22 Q. So the events leading up were just multiple lawsuits.

23 A. I had litigation. And based upon the ownership of the  
24 assets, which had been appropriately placed into various  
25 estate planning tools to primarily avoid inheritance tax

1 should something happen to my wife and I, I did not have  
2 access. Those were not my assets; although, they were part  
3 of the estate's.

4 So I was running up against a limited amount of  
5 resources in order to address litigation expenses, and I  
6 was spending all the money on paying for defense lawyers.  
7 I knew there were creditors, and I was trying to come to  
8 some type of reasonable conclusion on how to, how to move  
9 forward with that litigation and get it concluded.

10 Q. Did your, did your practice end in approximately  
11 February of 2013?

12 A. Functionally, yes.

13 Q. And what happened to your revenue stream at that point?

14 A. Declined significantly.

15 Q. So we had a decline in revenue and increased  
16 liabilities needed to defend -- cost of defending the  
17 liabilities. Are those the events that preceded the  
18 bankruptcy?

19 A. That is correct.

20 Q. So you mentioned Mr. Jurovich, although he's not the,  
21 your counsel of record in this case, is he?

22 A. He is not.

23 Q. How did we go from Mr. Jurovich to Mr. Dye?

24 A. In 2012, we relocated back to Montana, myself and my  
25 family. We were Montana residents. Beginning at the end

1 of 2012 and - (inaudible) - 2013, 2014, Mr. Jurovich  
2 provided extensive counsel and extensive recommendations,  
3 and ultimately he actually participated in interviewing  
4 Mr. Dye on the phone whom I identified as a bankruptcy  
5 attorney with extensive experience here in Montana.

6 Q. And then did you ultimately decide to -- obviously, you  
7 decided to file a Chapter 11 case.

8 A. Based on my conversations, extensive conversations with  
9 Mr. Jurovich and based upon extensive conversations and  
10 preplanning with Mr. Dye, they both recommended that was  
11 the best course of action.

12 Q. Did you have any idea or warning that the events that  
13 have engulfed you since you filed this case were going --  
14 might occur?

15 A. Absolutely none.

16 MR. PATTEN: Relevance, Your Honor.

17 THE COURT: Pardon?

18 MR. PATTEN: Relevance. What does the advice  
19 about filing bankruptcy have to do with any of the factors  
20 that the Court's supposed to --

21 THE COURT: Well, I've only treated this as  
22 background because we've -- we're really beyond that anyway  
23 at this point with the settlements, but -- I'm going to  
24 overrule, but I'm going to ask Mr. Cossitt to kind of move  
25 it along.



1 Q. (By Mr. Cossitt) He overruled the objection. You can  
2 answer the question, sir.

3 A. Would you repeat it, Mr. Cossitt?

4 Q. The question was: Did either of these lawyers warn you  
5 that you might get the living daylights sued out of you and  
6 your family?

7 A. Absolutely not.

8 Q. Had you known of this risk, would you have filed the  
9 case?

10 A. Absolutely not.

11 Q. Okay. Let's, let's talk a little bit about the lawsuit  
12 called "Adversary 15-15." That's the collection lawsuit  
13 that Mr. Womack filed against you and your family members.

14 A. I understand.

15 Q. Okay. Do you have an estimate of the length of time it  
16 would take to get that case prepared for trial?

17 MR. PATTEN: Objection; foundation. There's  
18 no --

19 THE COURT: Sustained.

20 Q. (By Mr. Cossitt) Okay. Have you been involved in  
21 lawsuits as a litigant?

22 A. I have.

23 Q. How many?

24 A. Litigant or defendant? I'm sorry.

25 Q. Plaintiff or defendant, as a litigant. Not as an

1 expert witness but as a litigant, either a plaintiff or  
2 defendant, how many lawsuits have you been involved in in  
3 your adult life?

4 A. A dozen.

5 Q. Are you familiar with the respective rules of  
6 plaintiffs and defendants?

7 A. Very much so.

8 Q. Have you hired many, many lawyers over the years to  
9 represent you?

10 A. I have.

11 Q. How many?

12 A. Probably 20 to 25.

13 Q. Okay. And have you prosecuted or defended many number  
14 of lawsuits to conclusion?

15 A. No.

16 Q. Settled them?

17 A. Settled some, some were dismissed, but when they were  
18 settled, it was fairly far in the game.

19 Q. You've worked closely with lawyers and had a chance to  
20 receive their advice and counsel with respect to litigation  
21 management?

22 A. Yes, sir.

23 Q. Have you served as an expert witness?

24 A. Yes, sir.

25 Q. How many cases?

1 A. Approximately, 50.

2 Q. Have you, during the course of serving as an expert  
3 witness, have you had an opportunity to work closely with  
4 lawyers preparing your expert testimony in the cases?

5 A. Yes, sir.

6 Q. Okay. Do you have an estimate, based on your, your  
7 experience, then, do you have an estimate of how much  
8 pretrial discovery and dispositive motions and things, how  
9 much time it will take to prepare Adversary 15-15 for  
10 trial?

11 MR. PATTEN: Objection --

12 UNIDENTIFIED SPEAKER: Objection.

13 MR. PATTEN: -- there's no foundation that the  
14 witness has any knowledge of the procedures of Bankruptcy  
15 Court.

16 MR. COSSITT: You know what? I'll respond to the  
17 objection by saying this is a lay opinion. The Court's got  
18 wide discretion and the Court can determine how much weight  
19 it wants to give this testimony, but it does come -- I urge  
20 the Court to overrule the objection because it does come in  
21 as lay opinion testimony.

22 THE COURT: For what purpose?

23 MR. COSSITT: It goes to the four-factor test and  
24 the complexity and the expense and the delay of attending  
25 to it. And this witness's opinions are going to vary from

1 the opinions that were expressed by the trustee.

2 THE COURT: I really see those factors going more  
3 to the trustee's review, investigation, and conclusions  
4 than necessarily from the parties.

5 MR. COSSITT: We ask the Court to overrule the  
6 objection so that we can provide our testimony and help  
7 guide the Court to a better informed overall resolution of  
8 the thing. And the Court is equipped to sift through  
9 divergent testimony, receive and sift through divergent  
10 testimony.

11 And to -- my offer of proof on this would be that  
12 if this --

13 THE COURT: Do an offer of proof --

14 MR. COSSITT: All right. If this --

15 THE COURT: -- because I'm going to sustain the  
16 objection.

17 MR. COSSITT: If this -- okay. If this testimony  
18 were allowed, I would expect to elicit testimony from this  
19 witness that he has had extensive experience with lawyers,  
20 he's familiar with the litigation process, that he's  
21 qualified to offer a lay, lay opinion on the same topics  
22 that the trustee testified earlier today that his opinion  
23 would be different.

24 And I could go into the specifics of what I  
25 expect to elicit, but I'll just leave it at that, that his

1 opinions on a number of the four -- the expense,  
2 complexity, and delay, and cost of attending to this will  
3 be divergent from the trustee's opinions expressed earlier.  
4 That concludes my offer of proof, and I would just ask the  
5 Court to reconsider its ruling and allow the testimony.

6 THE COURT: The ruling stands. You may proceed.

7 Q. (By Mr. Cossitt) Dr. Schneider, do you have an opinion  
8 on what you -- what your lawyers, either Mr. Dye or myself,  
9 have told you as to the percent of chance of successfully  
10 defending Adversary No. 15-15?

11 A. The collection -- I think we'll have at least an  
12 80 percent chance of being successful with defending it.

13 Q. Do you believe the trustee might encounter any  
14 difficulties in collecting any judgments that he may  
15 obtain?

16 A. I think that we will spend every resource necessary in  
17 order to litigate that to within our powers and within the  
18 court system and that the amount that, regardless of  
19 judgment, that the amount that would be -- that Mr. Womack  
20 or his attorneys could obtain would be dramatically less  
21 than that is offered in the settlement.

22 Q. You heard the trustee's testimony earlier today about  
23 the complexity, the expense, and the inconvenience of the  
24 litigation, didn't you?

25 A. Yes.

1 Q. Do you agree with his testimony?

2 A. Yes.

3 MR. COSSITT: Your Honor, may I approach the  
4 witness?

5 THE COURT: You may.

6 MR. COSSITT: The record should reflect that  
7 we'll be handing the witness the settlement agreement that  
8 is at Docket 29-2. That's Docket 290-2, and it's also  
9 labeled Exhibit TT-2.

10 Q. (By Mr. Cossitt) Dr. Schneider, do you know what  
11 Docket 290-2 is?

12 A. I do.

13 Q. What is it?

14 A. It's the settlement agreement and release.

15 Q. In which case?

16 A. Both cases.

17 Q. Take a closer look, Doctor. Maybe take a look at  
18 Paragraph B on page 2.

19 A. I apologize. It's for AP 15.

20 Q. Okay. Let's move to the section on page 2 that talks  
21 about agreement and release, Paragraph 2 where it says  
22 "terms."

23 A. I'm there.

24 Q. Okay. The Term 2(a) is the Tommy Armour house or the  
25 Billings house?

1 A. Correct.

2 Q. What's your opinion as to the value of that?

3 A. At least \$600,000.

4 Q. And is it your view that your wife, Michelle, owns half  
5 of it?

6 A. She does.

7 Q. And then let's move to Paragraph C. That's the  
8 Whispering Winds Ranch. What's your opinion of value on  
9 that?

10 A. The remainder of the ranch that's for sale is actually  
11 listed at over \$1.8 million. And that, like Mr. Womack had  
12 testified to, the current real estate agent has indicated  
13 there are several parties that are interested at that  
14 level.

15 Q. What's your opinion of value? Not who's interested;  
16 what's your opinion of value?

17 A. 1.8 to \$2 million.

18 Q. Okay. Let's move on to Paragraph F on page 3, sir.

19 A. I'm there.

20 Q. And what is -- what's that?

21 A. This refers to the current trust account, moneys that  
22 are held in Mr. -- in the Goetz law firm trust account  
23 relative to the prior sale of a smaller guest home and a  
24 small amount of property that surrounded that guest home  
25 from Whispering Winds Ranch.

1 Q. And that's got -- the trust account has roughly 350  
2 grand in it, doesn't it?

3 A. To my understanding, yes.

4 Q. I mean, didn't some money come out to pay the mediator  
5 and that sort of thing?

6 A. Yes.

7 Q. But roughly 350 grand?

8 A. Yes.

9 Q. Okay. Then the Paragraph G, it discusses the REIT.  
10 And as a practical matter, is the REIT going to be  
11 available to the trustee?

12 A. It will be with a court order.

13 Q. But you need a court order to -- why don't you explain  
14 that a little bit, please.

15 A. So the REIT is not a liquid; it's -- asset; it is, it's  
16 real estate. And it's controlled by K - (inaudible) - S.  
17 They have their -- there are specific requirements for  
18 distribution of that asset. I inquired after the mediation  
19 and agreement to settle this case as to the ability to  
20 liquidate that. They indicated they would only do so or  
21 consider doing so based upon a court order.

22 Q. Okay. And if, if it can't be liquidated, then the --  
23 Paragraph F, G, and H read together basically means that  
24 the trustee gets 200 -- out of the 350 grand in the Goetz  
25 firm account, the trustee gets 240 and Michelle gets 110?



1 A. Correct.

2 Q. Okay. On Paragraph I -- do you see that?

3 A. I do.

4 Q. Yeah. And that's, that's an agreement to split the tax  
5 refund, right?

6 A. Correct.

7 Q. So how much does that net the bankruptcy estate?

8 A. \$62,000.

9 Q. And then overall, did you add up the value of all of  
10 these various assets?

11 A. We did, yes.

12 Q. And what did you come up with?

13 A. Just under \$3 million.

14 Q. And that's the value of the consideration that you and  
15 your family members are putting in to fund the settlement?

16 A. Yes.

17 Q. Okay. And then in addition to that consideration,  
18 you've got -- or MedPort owns some property in California?

19 A. It does.

20 Q. What's that worth?

21 A. Just under \$2 million.

22 Q. So if I understand this right, your testimony is that  
23 the, the pile of assets that have been under consideration  
24 is worth about five, right?

25 A. Correct.

1 Q. All right. And then I further understand your  
2 testimony that, that the -- you think the value of what's  
3 being put in here is in the 2.9 or 3.0 million range?

4 A. Yes.

5 Q. Let's talk about the case that's known as  
6 "Adversary 15-20." Okay?

7 A. Yes, sir.

8 Q. What do you understand the claims to be in that case?

9 A. Mr. Womack has filed that case to deny the discharge  
10 requested under my Chapter 7 bankruptcy.

11 Q. And did you carefully review the allegations in the  
12 case with Mr. Dye?

13 A. I carefully reviewed them with Mr. Dye, yes.

14 Q. Did he prepare and file an answer in the case?

15 A. He did.

16 Q. And tell us, what's, what does the answer basically  
17 say?

18 A. After going through it in great detail with him, giving  
19 him all the evidence, it was his opinion and so filed that  
20 in general, we deny --

21 MR. PATTEN: Objection; hearsay, Your Honor.

22 THE WITNESS: -- we deny the --

23 THE COURT: Just a moment.

24 UNIDENTIFIED SPEAKER: Objection.

25 MR. PATTEN: Objection; hearsay. The witness is

1     testifying as to somebody else's opinion.

2                 THE COURT: I understand. I'm going to sustain,  
3     even though I would like to know what he said. But I'm  
4     going to sustain.

5     Q. (By Mr. Cossitt) Did he file an answer on your behalf?

6     A. He did.

7     Q. What did the answer say?

8     A. In general: Deny the claims.

9     Q. And that's in the, I think -- excuse me.

10                MR. GARDNER: It's Trustee's 5, Mr. Cossitt.

11                MR. COSSITT: May I approach the witness, Your  
12     Honor?

13                THE COURT: You may.

14                MR. COSSITT: The record should reflect that I'm  
15     going to hand the witness Docket 287-1. That's  
16     Docket 287-1, which is also labeled Schneider Exhibit JS-1.  
17     And I'm proud to announce that that is the only exhibit  
18     that I've prepared for today's proceedings.

19     Q. (By Mr. Cossitt) Dr. Schneider, do you have  
20     Docket 287-1 there in front of you, sir?

21     A. I do.

22     Q. Okay. What is it?

23     A. It's the answer to the first amended complaint in  
24     Adversary No. 15-00020.

25     Q. And do you recognize the signature block in the upper

1 left-hand corner --

2 A. I do.

3 Q. -- on the first page?

4 A. I do.

5 Q. Who is it?

6 A. Mr. Dye.

7 Q. Was he your lawyer?

8 A. He was.

9 Q. And do you think this is a true and accurate copy of  
10 the answer that he filed on your behalf?

11 A. I do.

12 MR. COSSITT: Your Honor, we move to admit  
13 Exhibit JS-1, which is located at Docket 287-1.

14 THE COURT: Any objection?

15 MR. PATTEN: I think the Court can take judicial  
16 notice of it anyway, Your Honor.

17 THE COURT: The exhibit's admitted.

18 MR. COSSITT: I want it in substantive evidence.

19 Q. (By Mr. Cossitt) Dr. Schneider, is that the document  
20 that you're suggesting in which you deny the allegations  
21 that the Chapter 7 trustee has made against you?

22 A. Yes.

23 Q. And it raised defenses?

24 A. Yes.

25 Q. Did Attorney Dye express thoughts or opinions about

1 your chances of beating this thing?

2 A. He did.

3 Q. What does he think?

4 A. (Inaudible.)

5 MR. PATTEN: Objection -- (inaudible.)

6 THE COURT: Pardon, Mr. Patten?

7 MR. PATTEN: Hearsay.

8 THE COURT: Sustained.

9 Q. (By Mr. Cossitt) What's your view about winning this  
10 lawsuit?

11 A. After careful consideration in talking with my  
12 attorneys, I believe it's better than 80 percent.

13 Q. Do you have an opinion as to how long it will take to  
14 prepare this case for trial?

15 A. (Inaudible) -- six months.

16 Q. Do you have an opinion as to how long the trial might  
17 last?

18 A. I would assume at least a week.

19 Q. Do you have any idea or have you budgeted for what it  
20 might cost to properly defend the allegations in this  
21 thing?

22 A. Approximately, \$300,000.

23 Q. Are you prepared to commit those resources to defend  
24 it?

25 A. No.

1 Q. Pardon?

2 A. I will have to obtain those resources by liquidating  
3 the assets that are currently in -- offered in the  
4 settlement agreement.

5 Q. You and your family members.

6 A. Correct.

7 Q. Okay. You know, let's talk about that for a little  
8 bit. Your --

9 THE COURT: Property other than property of the  
10 estate.

11 MR. COSSITT: I'm sorry, Your Honor?

12 THE COURT: Property other than property of the  
13 estate.

14 MR. COSSITT: Well, that will be the testimony I  
15 would like to elicit.

16 Q. (By Mr. Cossitt) The trustee has made allegations that  
17 a bunch of those assets belong to his bankruptcy estate,  
18 right?

19 A. He has.

20 Q. But as of right now, they're titled in the names of  
21 other LLCs and trusts, right?

22 A. They are.

23 Q. And nothing's changed, right?

24 A. Correct.

25 Q. So the moneys that are tied up in the Gardner trust

1 account, if this settlement's not approved, what is the  
2 Schneider clan's plans with respect to those?

3 A. Well, the -- we would ask -- that money is legally  
4 owned by the children's irrevocable trust, and we would ask  
5 their representative counsel to move aggressively to  
6 liberate that entire amount as there is excellent case law  
7 and Supreme Court opinion from Wyoming where that  
8 location -- where that ranch is located that shows --

9 MR. YORK: Your Honor, excuse me. Now I'm going  
10 to object to the lack of foundation.

11 THE COURT: Sustained.

12 Q. (By Mr. Cossitt) Did you -- have you and your family  
13 members engaged Montana counsel to take a look at the  
14 validity of the lis pendens that the trustee has filed?

15 A. We have.

16 Q. And have your lawyers engaged Wyoming counsel where the  
17 Whispering Ranch, where the Whispering Ranch lands are  
18 located?

19 A. They have.

20 Q. And did Wyoming counsel provide case law and other  
21 materials to your Montana lawyers?

22 A. They did.

23 Q. Did they share that with you?

24 A. They did.

25 MR. YORK: Objection; hearsay, one more question.

1 THE COURT: Well, I'm going to overrule that, and  
2 I'll allow you to --

3 Q. (By Mr. Cossitt) Did they share the Wyoming case law  
4 with you?

5 A. They did.

6 Q. Was it a topic of discussion with respect to freeing up  
7 the funds that are sitting in the Goetz firm trust account?

8 A. Yes.

9 Q. Did you receive advice and counsel from your lawyers?

10 A. Yes.

11 Q. What was it?

12 MR. YORK: Objection; hearsay.

13 UNIDENTIFIED SPEAKER: Objection; hearsay.

14 THE COURT: I'm going to sustain that. I'll  
15 allow you to rephrase.

16 Q. (By Mr. Cossitt) What did you understand -- given the  
17 experience, your experience with lawsuits that we elicited  
18 from you earlier, sir, did you read the case and the other  
19 materials that were provided to you in the emails?

20 A. In detail.

21 Q. Did you form your own opinions?

22 A. I did.

23 Q. What is your own opinion with respect to --

24 MR. PATTEN: Objection, Your Honor. Is he going  
25 to render a legal opinion? I don't think he's competent to



1 do that, Your Honor.

2 THE COURT: No. He's rendering a personal  
3 opinion, based upon his own knowledge.

4 MR. COSSITT: I think that he's --

5 THE COURT: It goes to weight.

6 MR. COSSITT: The objection is overruled?

7 THE COURT: It is.

8 Q. (By Mr. Cossitt) You may answer, if you remember the  
9 question.

10 A. I reviewed the, the material provided by the Wyoming  
11 attorneys to the Montana attorneys, and it's my  
12 understanding and belief that we would prevail in --  
13 under -- based upon that material in recapturing all the  
14 moneys that -- from any, from any past or future sale of  
15 the Wyoming Whispering Winds Ranch.

16 Q. Is it your family's intention to -- if this  
17 settlement's not approved, is it your family's intention to  
18 assert your ownership to the Whispering Winds Ranch,  
19 liquidate it, and use that to fund continued litigation  
20 costs?

21 A. To the fullest extent possible, yes.

22 Q. Has the trustee obtained an injunction or other  
23 prejudgment remedy with respect to any of those sale  
24 proceeds?

25 A. No.

1 Q. Now, in settling Adversary No. 15-20, you and Michelle  
2 have included the Billings house, right?

3 A. Yes.

4 Q. And I think you said you thought it was worth about 600  
5 grand.

6 A. At least.

7 Q. Okay. And so is it -- who owns the Billings house?

8 A. John and Michelle Schneider.

9 Q. So do you folks own that 50/50?

10 A. We do.

11 Q. Okay. So the value of her interest is about 300 grand,  
12 right?

13 A. It is.

14 Q. And is it your view or the Schneider clan's view that  
15 that 300 grand is off the table --

16 A. It is.

17 Q. -- other than involuntarily providing it in the context  
18 of this settlement?

19 A. Yes.

20 Q. And, then, with respect to your half, you claimed a  
21 homestead exemption in your half, right?

22 A. Yes.

23 Q. And that -- the trustee did not object to that, did he?

24 A. He did not.

25 Q. So you -- is your homestead exemption worth 125 in that

1 property, or do you know?

2 A. It is worth 125,000.

3 Q. Okay. So if I understand this right, the consideration  
4 that, that the Schneider clan is offering with respect to  
5 this discharge case is right about \$425,000. Right?

6 MR. YORK: Objection; leading.

7 THE COURT: I'm going to overrule and allow him  
8 to answer.

9 THE WITNESS: You're -- it is about \$425,000,  
10 yes.

11 Q. (By Mr. Cossitt) And what did you, what did you  
12 testify you thought it would cost to try that discharge  
13 case?

14 A. At least 300,000.

15 Q. So you're putting in the cost of defense plus a little  
16 bit extra, huh?

17 A. Yes, expert witnesses, etc.

18 Q. At the time of the mediation, do you know if there were  
19 any claim objections on file?

20 A. There were not.

21 Q. And do you know the aggregate amount of claims that  
22 were filed in this case?

23 A. I do.

24 Q. How much is that?

25 A. Approximately, \$11 million.

1 Q. So at the time of mediation, you were sitting across  
2 the table from a mediation opponent who was asserting  
3 \$11 million worth of claims.

4 A. He was.

5 Q. Do you believe some of those claims are contingent?

6 A. They are.

7 Q. Do you believe some of those claims are unliquidated?

8 A. They are.

9 Q. Do you believe some of those claims are overstated?

10 A. Profoundly.

11 Q. Had you requested that the trustee object to claims  
12 earlier in this case?

13 A. Yes.

14 Q. If the claims objection process had been begun and  
15 concluded -- let me withdraw that question.

16 You have since filed a number of claim objections on  
17 your own, haven't you?

18 A. We have.

19 Q. When the dust settles on this whole claim objection  
20 process, what's your best estimate as to the amount of  
21 allowed unsecured claims that will be remaining against  
22 this estate?

23 A. Somewhere between 1.0 and 1.5 million.

24 Q. Had that process been begun and concluded prior to the  
25 mediation, would you have conducted and postured yourself

1 differently at the mediation?

2 MR. GARDNER: Objection; speculation and  
3 relevance.

4 THE COURT: I'm going to sustain.

5 Q. (By Mr. Cossitt) You've looked at the objection by  
6 Attorney Patten in this case, haven't you?

7 A. I have.

8 Q. And what's the basic thrust of the Patten objection,  
9 the PI -- we'll call it the "PI claimants' objection."

10 A. Mr. Patten has -- is representing medical malpractice  
11 claimants that have vastly overstated and -- very  
12 defensible claims against me, and so therefore, they're  
13 vastly overinflated as to their value.

14 Q. Okay.

15 A. That's it.

16 Q. And his -- the claimants that he's represented, they're  
17 represented by counsel, aren't they?

18 A. They are.

19 Q. And with your background in medicine and being an  
20 expert witness, are you familiar with how medical  
21 malpractice litigation is normally financed?

22 A. Yes.

23 Q. And how is it normally financed?

24 A. Through insurance companies.

25 Q. On the plaintiff's side.

1 A. Oh, contingency fees.

2 Q. Okay. And do you know what the range of a reasonable  
3 and normal contingency fee is in southern Montana and  
4 northern Wyoming?

5 MR. PATTEN: Objection --

6 MR. YORK: Objection --

7 MR. PATTEN: -- irrelevant.

8 THE COURT: I'm going to sustain.

9 MR. COSSITT: It goes to the fourth factor, this  
10 court's deference to the reasonable views of creditors.  
11 And the thrust of the Patten objection is that we didn't  
12 put enough money on the table. The testimony I would like  
13 to elicit is that's not the problem. The problem here is,  
14 is that 80 percent of what we're putting into this case is  
15 going to the lawyers.

16 The line of questioning -- and to the extent that  
17 the objection on behalf of the creditors - and that is the  
18 fourth factor of the test - goes to the reasonable views,  
19 I'm trying to elicit testimony to demonstrate that the  
20 views that are being expressed in the objection are  
21 misguided and therefore not reasonable.

22 THE COURT: Mr. Patten.

23 MR. PATTEN: Your Honor, I think we have a number  
24 of our clients here that I think would be happy to take the  
25 stand and express their views on the reasonableness of

1 these views. That's an irrelevant consideration for this  
2 court. The Court is -- what is in the best interest of the  
3 creditors?

4 And if the creditors are saying, "We don't like  
5 the settlement, we don't want the settlement, it falls on  
6 us. If the settlement's not approved, it's on us," I think  
7 that speaks exactly what the deference of the creditors is.

8 MR. COSSITT: May I respond?

9 THE COURT: You may.

10 MR. COSSITT: You know, Your Honor, at  
11 Docket 227, the objectors assert 7.1 million in claims,  
12 61 percent of the total. In Paragraph 4 of that same  
13 document, they calculate a 4 percent dividend.

14 And the thrust of their objection at Docket 227  
15 is: There ain't enough money here for this court to make a  
16 finding that this is a fair and equitable settlement.

17 Their thrust in their objection is: They didn't  
18 put enough money in.

19 And with all due respect to Counsel's position  
20 here, Your Honor, I think it goes to the fourth factor, the  
21 reasonableness of their views. And we are trying to meet  
22 head-on with this testimony the written objection that he's  
23 raised in Docket No. 227. We request a little bit of  
24 latitude.

25 MR. JAMES: Your Honor.

1 THE COURT: Mr. James.

2 MR. JAMES: I join in Mr. Patten's objection.

3 And I go back to the Court's comments earlier today that  
4 there is a public policy issue here. And you asked us to  
5 steer towards that issue, and this is an unprecedented  
6 issue.

7 And, you know, if I'm understanding this now, the  
8 issue before the Court, as Mr. Cossitt is framing it, is  
9 simply whether or not Dr. Schneider is paying enough money  
10 to purchase his discharge. That's not the public policy  
11 issue.

12 The amount of the settlement certainly is  
13 critical, but the public policy issue here is: Can someone  
14 purchase their discharge when they have not followed the  
15 bankruptcy code, they haven't followed the rules, they've  
16 disobeyed lawful orders of the Court, they haven't  
17 disclosed all of their assets, they've hidden and  
18 transferred assets, they haven't cooperated with the  
19 trustee, they've misbehaved prepetition and postpetition?

20 And so, I mean, I think this is all irrelevant.  
21 I mean, I think we have to get back to the public policy  
22 issue that's been framed.

23 THE COURT: I'm going to sustain the objection.

24 Q. (By Mr. Cossitt) Do you know how much the trustee and  
25 his lawyers are receiving for their fees in this case?



1 A. Yes.

2 Q. How much?

3 A. Forty percent.

4 Q. Okay. And have you had the opportunity to review any  
5 fee agreements in the medical malpractice cases against  
6 you?

7 A. I'm generally aware of them, but I have not reviewed  
8 the exact documents. They're between --

9 Q. What do you understand to be the types of contingency  
10 fees that are contained within those?

11 A. Thirty-five to forty percent.

12 MR. PATTEN: Objection. I thought he didn't  
13 know.

14 THE COURT: Yeah, I'm going to sustain.

15 MR. COSSITT: I'd like just a minute here --

16 THE COURT: Certainly.

17 MR. COSSITT: -- to take a look at my notes, Your  
18 Honor, before I conclude my direct.

19 THE COURT: Certainly.

20 MR. COSSITT: Thank you.

21 That concludes by direct examination.

22 THE COURT: Okay, thank you.

23 Mr. Gardner.

24 CROSS-EXAMINATION

25 BY MR. GARDNER:

1 Q. Dr. Schneider, good afternoon.

2 A. Hello.

3 Q. Do you have any idea how much it's going to cost for  
4 you and the other defendants in AP 15-15 for the defense of  
5 that action?

6 A. At least a million and a half dollars.

7 Q. And if I understood your testimony -- well, first, do  
8 you or the various entity defendants have a million and a  
9 half dollars in liquid funds to fund that defense?

10 A. We do not.

11 Q. And if I understood your testimony correctly, I believe  
12 you will expend every resource necessary to try to get the  
13 \$350,000 released from my trust account. Correct?

14 A. We will.

15 Q. And in order so you -- for you to have that money to  
16 spend on defense of the litigation or whatever other  
17 purpose you deem appropriate, correct?

18 A. Correct.

19 Q. And likewise, with the lis pendens we have on the  
20 Whispering Winds Ranch in Wyoming, if I understand your  
21 testimony correctly, you will expend every effort available  
22 to get that lis pendens released or removed so that you can  
23 liquidate that property and use those funds, correct?

24 A. We will.

25 Q. For litigation or for whatever other purpose you deem

1 appropriate, correct?

2 A. Yes.

3 Q. And by the way, you don't own the Whispering Winds  
4 Ranch, do you?

5 A. I do not.

6 Q. Your children's trusts own that?

7 A. From the purchase of the property through the  
8 construction, all of, all of which was completed by 2008 -  
9 2009, the children's trusts, first their company BCS, LLC,  
10 which was set up by an attorney in Wyoming, and then the  
11 children's irrevocable trusts, which was set up for the  
12 correct ownership of that property, at all times has been  
13 owned by the children.

14 Q. So the children's trusts own these --

15 A. The children's irrevocable trusts own that property,  
16 yes.

17 Q. And who is the trustee of that trust?

18 A. Michelle Schneider.

19 Q. Okay. And as to the lis pendens filed on the  
20 California home by the trustee, if I understand your  
21 testimony correctly, you will seek to do everything you can  
22 to remove that protection as well, correct?

23 A. The investment property from MedPort is located in  
24 California. Michelle Schneider rents that property as her  
25 home, and I'm living there at this point. We will expend

1 every effort to get the lis pendens removed and, if  
2 necessary, liquidate that entire property to defend this  
3 litigation.

4 Q. Okay. So if I understand you correctly, in essence,  
5 your testimony is without this settlement, you will make  
6 every effort you can to fully defend this litigation. You  
7 anticipate that will eat up a bulk of any assets that are  
8 available at the end of the day.

9 A. Yes.

10 MR. JAMES: Objection; leading question, and it  
11 is restating testimony given prior to this.

12 THE COURT: I'm going to overrule. He's answered  
13 as well, so -- are you done?

14 MR. GARDNER: That's all I have.

15 THE COURT: Okay. Mr. Parker.

16 CROSS-EXAMINATION

17 BY MR. PARKER:

18 Q. Dr. Schneider, were you in the courtroom for  
19 Mrs. Michelle Schneider's testimony?

20 A. I was.

21 Q. Did she tell the truth?

22 A. She did.

23 MR. PARKER: That's all I have.

24 THE COURT: Mr. Patten.

25 CROSS-EXAMINATION

1 BY MR. PATTEN:

2 Q. Dr. Schneider, you stated you estimate the various  
3 malpractice claims have a total value of 1 million to  
4 1.5 million?

5 A. I do.

6 Q. You remember Russell Monaco, do you not?

7 A. I do.

8 Q. He died under your care, did he not?

9 A. He died at -- he died, yes.

10 Q. Your license in Wyoming was suspended because of your  
11 actions with respect to Mr. Monaco, correct?

12 MR. COSSITT: Objection; relevance, badgering the  
13 witness.

14 THE COURT: Oh, come on, Mr. Cossitt, that wasn't  
15 badgering, but I don't know that it's relevant.

16 MR. PATTEN: Your Honor, the witness testified  
17 that the total claims had a value of a million to a  
18 1.5 million.

19 THE COURT: Correct.

20 MR. PATTEN: And I'm trying to bring out that  
21 there was far more than that.

22 THE COURT: Well, I'll allow you to cross on  
23 that. The objection is overruled.

24 Q. (By Mr. Patten) Your license was suspended because of  
25 your care of Mr. Monaco?

1 A. Because of the care that was rendered to Mr. Monaco by  
2 the physician's assistant and myself.

3 Q. How old was Mr. Monaco when he died?

4 A. Forty-seven.

5 MR. PATTEN: Excuse me a minute, Your Honor.

6 No other questions. Thank you.

7 THE COURT: Mr. James.

8 CROSS-EXAMINATION

9 BY MR. JAMES:

10 Q. Good afternoon, Dr. Schneider. The adversary discharge  
11 case is set for trial in approximately one month. How do  
12 you expect to spend \$300,000 on defense costs in that case  
13 in the next month?

14 MR. COSSITT: Objection; misstates the record.

15 THE COURT: You know, I'm going to, I'm going to  
16 sustain that because I probably -- you're basing on --  
17 you're relying upon what I said at the beginning of this  
18 hearing today that we had a scheduled time.

19 That was also held in abeyance during the time of  
20 mediation, and obviously you know, Mr. James, there's a lot  
21 of factors that go into it. That date and time is  
22 available and it may be set for that time, but at this  
23 point in time, it's not, so --

24 MR. COSSITT: Your Honor, may I be heard briefly?

25 Just to clarify the record, I'm looking at

1 Docket 22 in that adversary proceeding. And Docket 22 says  
2 very clearly: Trial scheduled for May 25 - 27, 2016, is  
3 vacated and subject to being reset.

4 And that's a direct quote from the order on  
5 Docket --

6 THE COURT: Well, it could be reset on the same  
7 dates.

8 MR. COSSITT: Very good, Your Honor. Thank you  
9 for allowing me to be heard.

10 MR. JAMES: Let me rephrase the question, Your  
11 Honor.

12 Q. (By Mr. James) Dr. Schneider, how are you going to  
13 spend \$300,000 defending the discharge adversary?

14 A. Paying defense attorneys.

15 Q. You believe that the attorneys that you've employed to  
16 represent you will charge you \$300,000 with respect to  
17 AP 20?

18 A. I do.

19 Q. During your bankruptcy, have you cooperated fully with  
20 the trustee?

21 A. To the best of my ability.

22 Q. Were your bankruptcy schedules true and correct?

23 A. Mr. Dye admitted during the mediation that he had made  
24 a mistake to the trustee in discussing -- in providing the  
25 correct value of my capital account in Schneider Limited

1 Partnership. I overlooked that. I'm not familiar with the  
2 document when it was -- the detail of the document. I  
3 signed it in good faith believing it was accurate.

4 Q. Other than that, were your schedules true and accurate?

5 A. To the best of my ability.

6 Q. Have you provided the trustee with all of the documents  
7 that he has requested from you in this bankruptcy?

8 A. Mr. Womack had requested what I believe is over  
9 5 gigabytes of documents over the course of this, my 341  
10 hearings. To the best of my ability to get extensive  
11 documents from multiple different parties, I provided them  
12 in a timely fashion to Mr. Dye. I do not know how long it  
13 took Mr. Dye to get them to Mr. Womack.

14 Q. Did you provide Mr. Womack with everything he requested  
15 and everything the Court ordered you to produce?

16 A. To the best of my ability.

17 Q. You testified at the first meeting of creditors under  
18 oath, correct?

19 A. All the meetings of creditors were under oath, correct.

20 Q. And was your testimony at the first meeting of  
21 creditors true and correct?

22 A. To the best of my recollection.

23 Q. And is it your intention now to attend law school?

24 A. No.

25 Q. And are you taking a law course by correspondence?



1 MR. COSSITT: Objection; relevance.

2 MR. JAMES: It goes to his future ability to earn  
3 income, Your Honor. The trustee got into --

4 THE COURT: What does that have to do with, what  
5 does that have to do with the settlement?

6 MR. JAMES: The trustee got into the ability of  
7 whether or not creditors are going to be able to collect  
8 from Dr. Schneider and his income. They've opened this up.  
9 I think I'm entitled to explore it.

10 THE COURT: They did, they did. I'll overrule,  
11 and you may, you may answer, if you recall the question.

12 THE WITNESS: I don't. Please repeat it.

13 Q. (By Mr. James) Are you taking a correspondence course  
14 or have you been taking a correspondence course recently?

15 A. Well, I'm enrolled in a master's program through  
16 Creighton University, Creighton Law School.

17 Q. And what are you studying?

18 A. Conflict resolution, alternative dispute resolution.

19 Q. And do you intend to take additional law courses?

20 A. No.

21 Q. How are you currently earning income?

22 A. I'm paid as an independent contractor from MedPort for  
23 providing medical expert consultation for several  
24 income-generating streams, including expert witness  
25 testimony through my work with Alphatec Spine, and

1 education, and participating in the management of websites  
2 owned by MedPort.

3 Q. Have you participated in training physicians from  
4 foreign countries?

5 A. Yes.

6 Q. From what countries?

7 A. Ecuador; Japan; China; Mexico; Peru; some were in the  
8 eastern European bloc, I believe, the Ukraine.

9 Q. And have you traveled to any of those countries to  
10 assist with surgeries?

11 A. I have.

12 Q. What countries have you traveled to?

13 A. China, Mexico, and recently had a cancellation in  
14 Ecuador because of the earthquake.

15 Q. Are you still licensed as a physician in the state of  
16 Montana?

17 A. Yes.

18 MR. JAMES: I have nothing further, Your Honor.

19 THE COURT: Thank you. Anyone else?

20 UNIDENTIFIED SPEAKER: I don't have anything for  
21 this witness, Your Honor.

22 THE COURT: Okay. Any redirect?

23 MR. COSSITT: Could I have just a moment to  
24 collect my thoughts?

25 THE COURT: Certainly.

1 THE WITNESS: Could I ask a question?

2 THE COURT: Certainly.

3 THE WITNESS: There have been many allegations as  
4 to my character and whether I've done something wrong in  
5 communicating with Mr. Womack. Do I have a chance to  
6 address that?

7 THE COURT: Those are only issues that you should  
8 discuss with your counsel --

9 THE WITNESS: Okay.

10 THE COURT: -- and take his lead from there.

11 THE WITNESS: Thank you.

12 MR. COSSITT: Judge, no redirect.

13 THE COURT: Okay, very good. You may step down.

14 THE WITNESS: Thank you.

15 MR. COSSITT: No further witnesses on behalf of  
16 Dr. Schneider, Your Honor.

17 THE COURT: Okay, thank you. Mr. Parker, any  
18 witnesses?

19 MR. PARKER: No witnesses. I have Mr. Holden  
20 from -- MedPort's attorney has been with us today, but  
21 there's no room at the counsel table. And he asked, when I  
22 got the mic next, if I would point that out for the record.  
23 He's been, been here all day.

24 And I believe I can say MedPort also joins in the  
25 motion to --

1 THE COURT: Okay. I appreciate your indicating  
2 his presence.

3 Mr. Patten.

4 MR. PATTEN: Your Honor, I have a witness that I  
5 would like to call.

6 THE COURT: Okay. Mr. York, do you have  
7 witnesses?

8 MR. YORK: No, Your Honor, but I do have some  
9 documents that I would like to get admitted into the  
10 record, if I can.

11 THE COURT: Okay. Counsel has all seen them? Is  
12 there an understanding --

13 MR. YORK: They are part of the exhibits that we  
14 filed.

15 THE COURT: Okay. Is there an agreement at all?  
16 Have you discussed it with --

17 MR. YORK: I have not discussed it with them, but  
18 if you want me to do that now, I would be happy to do that  
19 now.

20 THE COURT: Well, no. Let's -- I'm just trying  
21 to see what we've got left. Mr. James, do you have  
22 witnesses?

23 MR. JAMES: No, Your Honor.

24 THE COURT: Okay. Mr. Patten.

25 MR. PATTEN: If I can call my witness.

1 THE COURT: Please.

2 MR. PATTEN: I'm going to call Mallory Monaco.

3 THE COURT: Okay. If I could have you come to  
4 the podium to be sworn, please. The clerk, you will hear  
5 her voice, and she'll administer the oath.

6 MALLORY MONACO, WITNESS, SWORN

7 DIRECT EXAMINATION

8 BY MR. PATTEN:

9 Q. Will you please state your name?

10 A. Mallory Monaco.

11 Q. Mallory, was Russell Monaco your father?

12 A. Yes.

13 MR. PATTEN: May I approach the witness, Your  
14 Honor?

15 THE COURT: You may.

16 Q. (By Mr. Patten) Mallory, I've handed you a document  
17 labeled PI-7. Do you have that?

18 A. Yes.

19 Q. Do you recognize that document?

20 A. Yes. I wrote it.

21 Q. That's a letter?

22 A. Hm-hmm, yes.

23 MR. PATTEN: Your Honor, I would like Ms. Monaco  
24 to have the opportunity to read the letter to the Court.

25 THE COURT: Is there a waiver of the

1 question-and-answer of this witness?

2 UNIDENTIFIED SPEAKER: Yes.

3 MR. GARDNER: Yes, Your Honor.

4 UNIDENTIFIED SPEAKER: Yes, Your Honor.

5 UNIDENTIFIED SPEAKER: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. PATTEN: Thank you.

8 THE COURT: You may read the letter.

9 THE WITNESS: Okay: I want people to understand  
10 how this whole ordeal has changed my family's lives  
11 forever.

12 My dad passed away when I was in eighth grade and  
13 my sister was in fifth. We were just 14 and 10. He left  
14 us a few weeks before Christmas on December 2, 2011. I  
15 remember that day like it just happened yesterday.

16 I still have all the amazing memories we all  
17 shared as a family, and I wish we could have had the chance  
18 to make a lot more. I am scared that since he passed while  
19 my sister and I were so young, that I'll forget all the  
20 little memories I cherished the most. That is one of my  
21 biggest fears in my life.

22 A lot of people ask how this affects my family.  
23 It has been really tough growing up with just one parent  
24 when my sister and I could have had two amazing parents  
25 raising us. It's also difficult knowing his death could

1 have been prevented. It's just really hard accepting that  
2 he is gone because of someone's mistake. It's very hard  
3 knowing that he won't be able to see all the important  
4 milestones coming up in our lives.

5 My mom is such an incredible woman for putting  
6 herself as the mom and dad role in the family. My dad was  
7 always the one who disciplined us while my mom was the  
8 laid-back one. My dad was a very quiet guy, but he always  
9 made everyone he met feel like they've known him for years.  
10 He was just a sweet, down-to-earth guy who everyone loved.

11 He used to be my coach in softball since I  
12 started when I was around eight. Him and, and his friends  
13 started a travel team for my friends and I. He was a great  
14 coach and cheerleader. Softball was my dad and I's thing  
15 together. Since he passed, it was really hard for me to  
16 continue playing softball with that team he started. I  
17 played for them for two years after he passed, but it just  
18 got to be too much pain and sadness that went along with  
19 the game that I loved so much.

20 I know he is still around and he would still  
21 be -- I would still be playing my heart out, and he would  
22 still be cheering me on. I do miss softball, but I miss my  
23 dad so much more.

24 My sister and my dad were so alike, it was crazy.  
25 It's difficult knowing my dad didn't, didn't get to see her

1 get out of her awkward stages and see and be a part of the  
2 beautiful teenager she is becoming.

3 I know he is watching over us, but that isn't the  
4 same as him being here while we grow up. He was a great  
5 man and loved by so many. He will never be forgotten as  
6 long as we all live. He will and has already missed so  
7 many big milestones in our life, but no matter what, he  
8 will always watch over us and be proud of the  
9 accomplishments we have succeeded in.

10 I know for sure he is very proud of my mom for  
11 raising my sister and me all by herself, which none of us  
12 ever thought she would have to do. I know he would do  
13 anything to be here with her and us again, and we all would  
14 do anything for him to be here, too. I love him so much,  
15 and I just wish I could tell him that.

16 MR. PATTEN: Thank you, Mallory. Your Honor, I  
17 would move the admission of Exhibit PI-7.

18 THE COURT: Any objection?

19 UNIDENTIFIED SPEAKER: No objection.

20 THE COURT: Exhibit PI-7 will be admitted.

21 MR. PATTEN: Thank you.

22 Thank you, Mallory.

23 THE WITNESS: Thank you.

24 THE COURT: You may step down. If you could  
25 leave that letter with me, and I'll take it and have it



1 filed.

2 Mr. York.

3 MR. YORK: Thank you, Your Honor. At this time,  
4 I would like to ask the Court to take judicial notice of  
5 two exhibits that I've filed with my exhibit list. These  
6 are documents related to a defamation lawsuit filed against  
7 Dr. Schneider in the United States District Court for the  
8 District of Wyoming. And, well, you can take judicial  
9 notice of these documents under Federal Rule of Evidence  
10 201 as, as court documents.

11 One of them is a transcript in the proceeding,  
12 and that is -- it's Exhibit UST-B. So I'd ask the Court to  
13 admit that at this time.

14 THE COURT: And this is under Docket 292, and it  
15 would be 292-4?

16 MR. YORK: Your Honor, I'm sorry. What I'm  
17 trying to get admitted is actually UST-C. My mistake.

18 THE COURT: Okay, "C," which is 292-5. Is there  
19 any objection?

20 MR. PARKER: Yes, I object. It's hearsay.

21 MR. COSSITT: Authentication, foundation, lack of  
22 relevance.

23 MR. YORK: Your Honor, what we have here --  
24 again, I think the critical element that we need to address  
25 here is whether or not this settlement is tainted, and the

1 case that addresses that issue is In Re: Bullis.

2 And I think that the issue there is whether or  
3 not a dishonest debtor is entitled to a discharge in this  
4 court proceeding. And Dr. Schneider's conduct in prior  
5 court and judicial proceedings is directly relevant to that  
6 issue, and it speaks to his motives and plans in what he's  
7 done in this particular case.

8 And in particular, Rule of Evidence 404 does  
9 allow character evidence if, for example, the evidence is  
10 admissible for another purpose other than -- for example,  
11 showing lack of accident, character, character evidence is  
12 irrelevant.

13 Under Federal Rule of Evidence 405: When a  
14 person's character trait is an essential element of a  
15 charge, claim, or defense, the character or trait may also  
16 be proved by relevant specific instances of the person's  
17 conduct.

18 This transcript, it says on its face that it's a  
19 certified copy. It reflects a certificate at the back of  
20 it, and it is a transcript of a proceeding in the United  
21 States District Court for the District of Wyoming. I don't  
22 believe there's any reasonable basis to dispute its  
23 authenticity.

24 And in terms of the hearsay objection itself,  
25 Your Honor, the statements that are in this transcript that

1 I would like to read into the record are statements by  
2 Dr. Schneider's own lawyer in the case, who was acting  
3 within the scope of his employment. As a result, they are  
4 not hearsay under the rules of evidence.

5 MR. PARKER: They're hearsay as to Michelle  
6 Schneider.

7 MR. YORK: Well, then, we can admit them as to  
8 Dr. Schneider.

9 MR. COSSITT: We object under 901 --

10 THE COURT: You know --

11 MR. COSSITT: We object under 901 for lack of  
12 authentication. The threshold for 901(a) is very low.  
13 901(b) gives us a road map on how to get this stuff  
14 admitted which hasn't been filed. So we object based on  
15 authentication, we further object based on best evidence  
16 and Rule 404.

17 MR. GARDNER: The trustee objects on relevance  
18 and hearsay.

19 THE COURT: Yeah. I think from the standpoint of  
20 the document and to take judicial notice of it for this  
21 proceeding is improper. I'm going to deny its admission  
22 and deny taking judicial notice of it.

23 MR. YORK: Okay, Your Honor. The other document  
24 that I request the Court to take judicial notice of is a,  
25 is a published opinion from Westlaw. This is UST

1 Exhibit D.

2 THE COURT: Okay. This would be 292-6 as well?

3 MR. COSSITT: Are we -- Your Honor, are we  
4 looking at -- did you say "292-6"?

5 THE COURT: Yeah.

6 MR. COSSITT: Okay. I just want to make sure I'm  
7 on the same page.

8 THE COURT: Yeah.

9 MR. YORK: And Your Honor, this --

10 THE COURT: Well, as it relates to a reported  
11 decision, obviously it's available in the resources to  
12 everyone in this room. I'm going to take judicial notice  
13 of it. I'm not sure for what purpose I would use it, but I  
14 mean, it's a published decision. Whether it's relevant,  
15 I'll decide when I'm considering this matter.

16 MR. YORK: Yeah, that's correct, Your Honor. And  
17 I would like to read it into the record because it reflects  
18 an investigation of one of Dr. Schneider's lawyers in the  
19 litigation connected in the United States District Court  
20 for the District of Wyoming. And it is a public record  
21 under Federal Rule of Evidence 803(8) as it is a record of  
22 a public office -- (inaudible.)

23 THE COURT: Well, before you do that, let me just  
24 ask: Is there any objection to the Court taking judicial  
25 notice of this case?

1 MR. PARKER: Yes.

2 UNIDENTIFIED SPEAKER: No.

3 MR. PARKER: If it's judicial notice of this case  
4 for the purpose that there was, in fact, a case, of course  
5 there's no objection, but if the Court is going to try to  
6 tease an adjudicated fact in this case out of an  
7 adjudicated fact in a case where no one at this table is a  
8 party, then --

9 THE COURT: Mr. Parker.

10 MR. PARKER: Yeah.

11 THE COURT: The Court has no intent of doing  
12 that --

13 MR. PARKER: Okay.

14 THE COURT: -- because it's -- in fact, I --

15 MR. PARKER: There's --

16 THE COURT: Even though I can take judicial  
17 notice of any published decision, I don't know that it's  
18 relevant.

19 MR. YORK: Your Honor, it reflects a pattern of  
20 Dr. Schneider's conduct in connection with a litigation  
21 proceeding. The investigation of his counsel was based on  
22 Dr. Schneider's conduct in that litigation, and there's a  
23 published investigative finding concerning that conduct in  
24 this opinion.

25 UNIDENTIFIED SPEAKER: Your Honor, none of us at

1 this table were parties to that. We object.

2 MR. COSSITT: I object --

3 THE COURT: The objection's noted.

4 MR. COSSITT: I object to the judicial notice  
5 that the Court's inclined to do based on the fact that  
6 these are, these are adjudicated facts, they are not  
7 generally known within the territorial jurisdiction of this  
8 court, and they are not capable of accurate or ready  
9 determination.

10 This is essentially an attempt to use issue -- to  
11 cite this opinion and use -- attempt to use issue or claim  
12 preclusion to get evidence into the record --

13 THE COURT: Mr. Cossitt, it will not be used for  
14 that purpose.

15 MR. COSSITT: Okay. Thank you, Your Honor.

16 MR. JAMES: Your Honor, if I might just comment.

17 THE COURT: Mr. James.

18 MR. JAMES: Dr. Schneider just testified that  
19 he's been honest, cooperative, and in his mind probably an  
20 ideal debtor throughout this entire proceeding. He's not  
21 repentant one bit. And the issue is: Is he a dishonest  
22 debtor?

23 Dr. Schneider has testified "no," he has not  
24 been, and this is evidence that shows that he has been a  
25 dishonest person and it's a continuing pattern. And it is

1 clearly relevant to the issues that are before the court  
2 today.

3 THE COURT: You don't think there's already some  
4 of that testimony that's already been submitted in this  
5 case today?

6 MR. JAMES: I think this, I think this is  
7 separate evidence, and I think it is important for this  
8 court to hear it. It won't take long. I think it's  
9 material, and I think that it should be presented.

10 MR. YORK: It goes to lack of accident, Your  
11 Honor, under Rule 404(b)(2). And again, under Rule 405(b)  
12 -- as specific evidence of a character trait of the  
13 defendant if that's a critical element, which I believe it  
14 is here. The question is: Is he an honest and  
15 misfortunate debtor?

16 And I think his prior conduct in litigation  
17 against him is relevant to whether or not his -- what he  
18 has failed to disclose here is an accident --

19 THE COURT: Well, the problem I have is, isn't  
20 that relevant to the underlying A 20 -- AP 20? It's not to  
21 the merits of the settlement and the factors associated  
22 therewith.

23 MR. YORK: It goes to whether or not the  
24 settlement is tainted. And the settlement is tainted if  
25 the debtor is buying a discharge to which he is not

1 entitled.

2 THE COURT: Well, whether it's tainted or not,  
3 I'm going to make a decision on whether I'm going to allow  
4 a debtor to put money forth to extract a discharge, whether  
5 it's tainted or not. I see that being a very open question  
6 whether -- and you know the approaches. Some have just  
7 taken the approach that it's not -- and it's a bright line,  
8 it's not allowed.

9 MR. YORK: That's correct.

10 THE COURT: And there are two other approaches,  
11 at least, that courts have taken and looked at that. And I  
12 think Mr. James briefed those, as I recall, and maybe you  
13 did as well, Mr. York.

14 MR. YORK: I did, Your Honor.

15 THE COURT: But again, I need to take the, take  
16 the evidence that's before me, weigh, and balance. And as  
17 I started this morning, I'm very concerned about a dollar  
18 amount even being in the settlement for AP 20, and I'm not  
19 so certain -- I mean, I think that there could have been a  
20 different structure to the settlement to have eliminated or  
21 avoided that whole issue.

22 And so I'm not going to utilize this case as it  
23 relates to character on the basis -- or for the basis of  
24 deciding these motions before me.

25 Now, they may -- it may very well be important if



1 this case goes forward on dischargeability as to character.  
2 It may well be, but I'm not going to -- I don't believe  
3 it's important in this time.

4 MR. YORK: Thank you, Your Honor.

5 THE COURT: Now, I may be proven wrong, but I  
6 just think that that's how I'm going to approach it.

7 MR. YORK: Thank you.

8 THE COURT: Okay.

9 MR. YORK: That's all I had, Your Honor.

10 THE COURT: Thank you. Do the parties have  
11 anything else? Attorneys have anything else?

12 UNIDENTIFIED SPEAKER: Two seconds, Your Honor.

13 THE COURT: Mr. Parker, anything else?

14 MR. PARKER: No, Your Honor.

15 THE COURT: Okay. Mr. Gardner?

16 UNIDENTIFIED SPEAKER: No, Your Honor.

17 THE COURT: I'll just go around and ask, I guess.  
18 Anything else?

19 MR. GARDNER: Just very quickly. Thank you for  
20 your time. I think the testimony has shown today --  
21 thumbs-up or thumbs-down, we appreciate your prompt  
22 consideration --

23 THE COURT: Sure, certainly.

24 MR. GARDNER: -- because there's, there's a lot  
25 of very -- (inaudible.)

1 THE COURT: Yeah. And let me address  
2 Mr. Cossitt's concern on my comment on trial setting. The  
3 order says what it says, I acknowledge that and understand  
4 that. And at the time it was entered, it -- obviously, I  
5 wanted to allow the parties to pursue resolution and  
6 settlement, if they could.

7 And obviously, it was probably a little in jest  
8 and I probably shouldn't have done it, but those dates are  
9 open and so there is, there is that opportunity. But I  
10 would not reschedule this until I had another status  
11 conference to see where all the parties are at, what their  
12 schedules are, obviously, and plan accordingly as it  
13 relates to this if I were inclined to not approve the  
14 settlements.

15 So Mr. Patten.

16 MR. PATTEN: May I make one brief comment, Your  
17 Honor?

18 THE COURT: You may.

19 MR. PATTEN: Your Honor, I think the reason we've  
20 been in court all day is that everyone on that side of the  
21 table, other than Mr. Parker, maybe, didn't participate in  
22 the mediation.

23 And I think that had all of the players  
24 participated in a mediation, maybe the outcome would be the  
25 same but without opposition, or maybe the outcome would be

1 different. But I do think that it may merit all of the  
2 parties getting together to see if there's a settlement  
3 that can be worked out.

4 THE COURT: Yeah. I'll be honest, when I heard  
5 there was going to be a mediation, I thought it was a  
6 mediation of -- when they said "global resolution," I was  
7 anticipating it was across the board. I didn't realize  
8 there was some limitation, and I maybe should have  
9 clarified that at the time I issued my order.

10 But obviously, I was informed this morning that  
11 claimants were not included and that only the parties that  
12 were named in the litigation were, which would be the --  
13 obviously, that would also be a normal process that those  
14 that are named in the party -- or in the lawsuit would be  
15 the ones in the mediation, so --

16 MR. PATTEN: Well, I think there's -- you know,  
17 it's unfortunate that, that we didn't. I understand that  
18 it may not be the ordinary course, but I do think that it  
19 would be worthwhile if we made an effort with all of us  
20 involved in it.

21 THE COURT: Well, I'm going to take -- I'm not  
22 ruling from the bench on this. I'm going to take it under  
23 submission and advisement. I will issue a decision. If,  
24 obviously, the parties do something between now and when I  
25 issue that decision, let the Court know.

1 MR. JAMES: Could I make a short comment, Your  
2 Honor?

3 THE COURT: You may, Mr. James.

4 It still doesn't -- just a follow-up to  
5 Mr. Patten's comment: It still doesn't resolve the issue  
6 of settlements of dischargeability claims, objections to  
7 discharge. And obviously, the U.S. Trustee has a very  
8 interested role in those as well that needs to be  
9 considered.

10 Certainly, the Court has approved settlements in  
11 that regard in the past; few, but there have been a few.  
12 But I think it, it -- one has to be careful.

13 MR. PATTEN: I do think, Your Honor, that if all  
14 of us were in front of the Court advocating for the  
15 approval of the settlement, including the U.S. Trustee,  
16 then, then that would be meaningful, certainly, even though  
17 it was -- there was a discharge that was resulting. And  
18 that's why I think that -- when I mean all of us to get  
19 together, I include the U.S. Trustee's Office.

20 But it's a, it's a -- I think it's upsetting the  
21 norm a little bit to settle a discharge claim, but  
22 certainly everybody here, everybody in the courtroom  
23 probably has an interest in the outcome, and they ought to  
24 have a chance to participate in --

25 THE COURT: Well --

1 MR. PATTEN: -- coming to a consensual  
2 resolution.

3 THE COURT: I appreciate the comments.  
4 Mr. James.

5 MR. JAMES: Your Honor, I echo Mr. Patten's  
6 sentiments to a large extent. I am a strong believer in  
7 settlement, and I think when attorneys do their job and the  
8 system works, we can get most things settled.

9 We would love the opportunity to participate in a  
10 meaningful settlement; what we're asking this Court to do,  
11 however, is to direct that the discharge cannot be a part  
12 of that discussion. The discharge and whether or not a  
13 debtor can get a discharge should not be commoditized.  
14 This should not be something the trustee can make a  
15 decision on, whether to sell or not to sell.

16 That should be a decision that's left to the  
17 judge whether or not a debtor has met the requirements for  
18 a discharge under the bankruptcy code adopted by Congress.  
19 And I hope and I pray that this court will deny the  
20 settlements and direct the parties to go back and try to  
21 settle this case without the discharge being on the table.  
22 Thank you.

23 THE COURT: I appreciate the comment.

24 MR. YORK: And, Your Honor, obviously the United  
25 States Trustee's Office would echo those comments.

1                   THE COURT: Well, with that, I believe that  
2 concludes the record. I appreciate your presentations.  
3 And with that, court is in recess.

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript  
from the electronic recording of the proceedings in the  
above-entitled matter, all done to the best of my skill and  
ability.

\_\_\_\_\_  
Jonny B. Nordhagen

\_\_\_\_\_  
07/06/16